



California
Department of
Health Services

SANDRA SHEWRY
Director

State of California—Health and Human Services Agency
Department of Health Services



ARNOLD SCHWARZENEGGER
Governor

November 9, 2006

TO: Prospective Applicants

SUBJECT: Request for Proposal (RFP) 06-55456

REFERENCE: Contract 06-55456 Provisions

The contract provisions in the RFP 06-55456 Supplemental Materials are for example purposes only.

All provisions may or may not appear in the resulting agreement.

As an example: State colleges and universities will have provisions that are different than a not-for-profit organization.

STANDARD AGREEMENT

STD 213 (DHS Rev 7/06)

REGISTRATION NUMBER

AGREEMENT NUMBER

1. This Agreement is entered into between the State Agency and the Contractor named below:

STATE AGENCY'S NAME

(Also referred to as CDHS, DHS, or the State)

California Department of Health Services

CONTRACTOR'S NAME

(Also referred to as Contractor)

2. The term of this Agreement is: July 1, 2007 through June 30, 2009

3. The maximum amount of this Agreement is: \$ 750,000
Seven Hundred Fifty Thousand Dollars

4. The parties agree to comply with the terms and conditions of the following exhibits, which are by this reference made a part of this Agreement.

Exhibit A – Scope of Work	X pages
Exhibit B – Budget Detail and Payment Provisions	4 pages
Exhibit B, Attachment I – Budget (Year 1)	1 page
Exhibit B, Attachment II – Budget (Year 2)	1 page
Exhibit C * – General Terms and Conditions	GTC 306
Exhibit D(C) – Special Terms and Conditions (Attached hereto as part of this agreement)	17 pages
Exhibit E – Additional Provisions	5 pages
Exhibit F – Copyright/Ownership/Use of Data	6 pages
Exhibit G – HIPAA Business Associate Addendum	7 pages
Exhibit H – Contractor's Release	1 page
Exhibit I – Travel Reimbursement Information (viewed in RFP Attachment H)	2 pages
See Exhibit E, Provision 1 for additional incorporated exhibits.	

Items shown above with an Asterisk (*), are hereby incorporated by reference and made part of this agreement as if attached hereto.
These documents can be viewed at <http://www.ols.dgs.ca.gov/Standard+Language>.

IN WITNESS WHEREOF, this Agreement has been executed by the parties hereto.

CONTRACTOR

CONTRACTOR'S NAME (if other than an individual, state whether a corporation, partnership, etc.)

BY (Authorized Signature)

DATE SIGNED (Do not type)

PRINTED NAME AND TITLE OF PERSON SIGNING

ADDRESS

STATE OF CALIFORNIA

AGENCY NAME

California Department of Health Services

BY (Authorized Signature)

DATE SIGNED (Do not type)

PRINTED NAME AND TITLE OF PERSON SIGNING

Allan Chinn, Chief, Contracts and Purchasing Services Section

ADDRESS

1501 Capitol Avenue, Suite 71.2101, MS 1403, P.O. Box 997413
Sacramento, CA 95899-7413**California Department of
General Services Use Only**☒ Exempt per: HSC 104480

Exhibit A Scope of Work

1. Service Overview

Contractor agrees to provide to the Department of Health Services (DHS) the services described herein.

The contractor will conduct a survey that studies the behaviors, attitudes and knowledge related to tobacco use among American Indians and Alaskan Native (AI/AN) adults (18 years old or older) residing in rural areas of California. The contractor will use scientific and creative data collection methodologies to provide accurate and culturally sensitive measures within the schedules approved in the agreement.

2. Service Location

The services shall be performed in various zip codes, area codes or geographical regions as directed by California Department of Health Services/Tobacco Control Section (CDHS/TCS) in California.

3. Service Hours

The services shall be provided during normal contractor working hours, Monday through Friday, excluding holidays

4. Project Representatives

A. The project representatives during the term of this agreement will be:

Department of Health Services	Contractor
Susan Henry, Contract Manager Telephone: (916) 449-5513 Fax: (916) 449-5505 E-mail: shenry@dhs.ca.gov	[Enter Name of Contractor's Contract Manager] Telephone: (XXX) XXX-XXXX Fax: (XXX) XXX-XXXX E-mail: XXXXXXXX@XXXXXXX

B. Direct all inquiries to:

Department of Health Services	Contractor
Tobacco Control Section Attention: Susan Henry, Contract Mgr. Mail Station 7206 1616 Capitol Ave., Bldg. 174 P.O. Box Number 997413 Sacramento, CA. 95899-7413 Telephone: (916) 449-5513 Fax: (916) 449-5505 E-mail: shenry@dhs.ca.gov	Section or Unit Name (if applicable) Attention: [Enter name, if applicable] Street address & room number, if applicable P.O. Box Number (if applicable) City, State, Zip Code Telephone: (XXX) XXX-XXXX Fax: (XXX) XXX-XXXX E-mail: XXXXXXXX@XXXXXXX

Exhibit A
Scope of Work

- C. Either party may make changes to the information above by giving written notice to the other party. Said changes shall not require an amendment to this agreement.

5. Allowable Informal Scope of Work Changes

- A. The Contractor or the State may propose informal changes or revisions to the activities, tasks, deliverables and/or performance time frames specified in the Scope of Work, provided such changes do not alter the overall goals and basic purpose of the agreement.
- B. Informal SOW changes may include the substitution of specified activities or tasks; the alteration or substitution of contract deliverables and modifications to anticipated completion/target dates.
- C. Informal SOW changes processed hereunder, shall not require a formal agreement amendment, provided the contractor's annual budget does not increase or decrease as a result of the informal SOW change.
- D. Unless otherwise stipulated in this agreement, all informal SOW changes and revisions are subject to prior written approval by the State.

6. Subcontractor Requirements

(Applicable to agreements under which services are to be performed by subcontractors including independent consultants.)

- A. Prior written authorization will be required before the Contractor enters into or is reimbursed for any subcontract for services costing \$5,000 or more. Except as indicated in paragraph A3) herein, when securing subcontracts for services exceeding \$5,000, the Contractor shall obtain at least three bids or justify a sole source award.
- 1) The Contractor must provide in its request for authorization, all particulars necessary for evaluating the necessity or desirability of incurring such cost.
 - 2) The State may identify the information needed to fulfill this requirement.
 - 3) Subcontracts performed by the following entities or for the service types listed below are exempt from the bidding and sole source justification requirements.
 - a) A local governmental entity or the federal government,
 - b) A State college or university from any State,
 - c) A Joint Powers Authority,
 - d) An auxiliary organization of a California State University or a California community college,
 - e) A foundation organized to support the Board of Governors of the California Community Colleges,
 - f) An auxiliary organization of the Student Aid Commission established under Education Code § 69522,
 - g) Entities of any type that will provide subvention aid or direct services to the public,
 - h) Entities and/or service types identified as exempt from advertising in State Administrative Manual Section 1233 subsection 3. View this publication at the following Internet address: <http://sam.dgs.ca.gov>,

Exhibit A
Scope of Work

- i) Other academic institutions of higher education, or consortia of academic institutions of higher education (including private universities and educational institutes).
- B. CDHS reserves the right to approve or disapprove the selection of subcontractors and with advance written notice, require the substitution of subcontractors and require the Contractor to terminate subcontracts entered into in support of this agreement.
 - 1) Upon receipt of a written notice from CDHS requiring the substitution and/or termination of a subcontract, the Contractor shall take steps to ensure the completion of any work in progress and select a replacement, if applicable, within 30 calendar days, unless a longer period is agreed to by CDHS.
- C. Actual subcontracts (i.e., written agreement between the Contractor and a subcontractor) of \$5,000 or more are subject to the prior review and written approval of CDHS. CDHS may, at its discretion, elect to waive this right. All such waivers shall be confirmed in writing by CDHS.
- D. Contractor shall maintain a copy of each subcontract entered into in support of this agreement and shall, upon request by CDHS, make said copies available for approval, inspection, or audit.
- E. Sole responsibility rests with the Contractor to ensure that subcontractors, used in performance of this agreement, are paid in a timely manner. The timeliness of said payments may be affected by the timeliness of payments issued by CDHS to the Contractor.
- F. The Contractor is responsible for all performance requirements under this agreement even though performance may be carried out through a subcontract.
- G. The Contractor shall ensure that all subcontracts for services include provision(s) requiring compliance with applicable terms and conditions specified in this agreement.
- H. The Contractor agrees to include the following clause, relevant to record retention, in all subcontracts for services:

"(Subcontractor Name) agrees to maintain and preserve, until three years after termination of (Agreement Number) and final payment from CDHS, to permit CDHS or any duly authorized representative, to have access to, examine or audit any pertinent books, documents, papers and records related to this subcontract and to allow interviews of any employees who might reasonably have information related to such records."
- I. Unless otherwise stipulated in writing by CDHS, the Contractor shall be the subcontractor's sole point of contact for all matters related to performance and payment under this agreement.

7. Scope of Work/Control of Project

Exhibit A
Scope of Work

- A. The Contractor shall provide the specific services, deliverables, and objectives as specified in the approved SOW, and any subsequent revisions.
- B. CDHS shall at all times maintain control and direction over the SOW being performed pursuant to this agreement. CDHS reserves the exclusive right to approve and adjust specific tasks to be performed within the SOW to be performed by the Contractor. These changes shall be accomplished by written notification to the Contractor or amendment to this agreement. Amendment to this agreement shall be mutually agreeable to both parties.

8. Progress Reports and Evaluation Instruments and Other contractual Requirements

- A. The Contractor shall submit progress reports postmarked no later than the due dates specified in Paragraph B below. Facsimile reports are not acceptable. Failure to submit timely and acceptable reports is cause for invoice payments to the Contractor to be delayed or disallowed. The Contractor's last monthly and/or final invoice will not be processed until an acceptable Final Evaluation Report has been received and approved by DHS.
- B. The Contractor shall submit Progress Reports, which describe accomplishments during the report period, to DHS at the address specified in this agreement, in a form and format prescribed by DHS and in accordance with the following schedule:

	FROM	TO	DUE DATE
1) First Report	07/01/07	12/31/07	01/15/08
2) Second Report	01/15/08	06/30/08	07/15/08
3) Third Report	07/01/08	12/31/08	01/15/09
4) Fourth Report	01/01/09	06/30/09	06/30/09

- C. The Contractor shall submit written evaluation reports and data sets with technical documentation, to the State at the address specified under Paragraph 2, above, in a form and format prescribed by the State and in accordance with the following schedule.

1) Draft Evaluation Report	05/01/09
2) Final Evaluation Report	06/15/09
3) Data Set and Technical Documentation	06/15/09
- D. Reports are to be prepared in accordance with the instructions and format identified in the TCS Competitive Grantees Administrative and Policy Manual.
- E. The Contractor shall complete State evaluation instruments, needs assessment instruments, and other evaluation requirements in accordance with a form and format prescribed by DHS.

Exhibit A
Scope of Work

- F. The Contractor shall comply with all State-issued program and policy letters which may be issued during the agreement term provided that DHS shall only make changes or impose additional requirements which will not result in additional costs to the Contractor.

9. Project Monitoring

- A. CDHS and all authorized State control agencies shall have access to all internal and external reports, records, and documents used by the Contractor in the operation and administration of this agreement. CDHS shall have the right to monitor all aspects of the Contractor's performance regardless of whether there are specific performance requirements in the agreement pertaining to the area being monitored.
- B. The Contractor shall cooperate, and require its subcontractors to cooperate, with CDHS or its designee by participating in meetings and/or site visits as CDHS may deem necessary to monitor Contractor compliance with the agreement.
- C. Access to Contractor's information related to this contract shall be during normal business hours and after prior written notification by CDHS.

- 10.** See the following pages for a detailed description of the services to be performed.

Exhibit B
Budget Detail and Payment Provisions

1. Invoicing and Payment

- A. For services satisfactorily rendered, and upon receipt and approval of the invoices, the State agrees to compensate the Contractor for actual expenditures incurred in accordance with the budget(s) attached hereto.
- B. Invoices shall include the Agreement Number and shall be submitted in triplicate not more frequently than monthly in arrears to:

Susan Henry, Contract Manager
Department of Health Services
Tobacco Control Section
MS 7206
P.O. Box 9974113
Sacramento, CA 95899-7413

- C. Invoices shall:

- 1) Be prepared on Contractor letterhead. If invoices are not on produced letterhead, invoices must be signed by an authorized official, employee or agent certifying that the expenditures claimed represent actual expenses for the service performed under this contract.
- 2) Bear the Contractor's name as shown on the agreement.
- 3) Identify the billing and/or performance period covered by the invoice.
- 4) Itemize costs for the billing period in the same or greater level of detail as indicated in this agreement. Subject to the terms of this agreement, reimbursement may only be sought for those costs and/or cost categories expressly identified as allowable in this agreement and approved by DHS.

2. Budget Contingency Clause

- A. It is mutually agreed that if the Budget Act of the current year and/or any subsequent years covered under this Agreement does not appropriate sufficient funds for the program, this Agreement shall be of no further force and effect. In this event, the State shall have no liability to pay any funds whatsoever to Contractor or to furnish any other considerations under this Agreement and Contractor shall not be obligated to perform any provisions of this Agreement.
- B. If funding for any fiscal year is reduced or deleted by the Budget Act for purposes of this program, the State shall have the option to either cancel this Agreement with no liability occurring to the State, or offer an agreement amendment to Contractor to reflect the reduced amount.

3. Prompt Payment Clause

Payment will be made in accordance with, and within the time specified in, Government Code Chapter 4.5, commencing with Section 927.

4. Amounts Payable

- A. The amounts payable under this agreement shall not exceed:
- 1) \$XXX,XXX for the budget period of XX/XX/XX through XX/XX/XX.
 - 2) \$XXX,XXX for the budget period of XX/XX/XX through XX/XX/XX.

Exhibit B**Budget Detail and Payment Provisions**

3) \$XXX,XXX for the budget period of XX/XX/XX through XX/XX/XX.

- B. Reimbursement shall be made for allowable expenses up to the amount annually encumbered commensurate with the state fiscal year in which services are performed and/or goods are received.
- C. The Contractor must maintain records reflecting actual expenditures for each state fiscal year covered by the term of this agreement.

5. Timely Submission of Final Invoice

- A. A final undisputed invoice shall be submitted for payment no more than ninety (90) calendar days following the expiration or termination date of this agreement, unless a later or alternate deadline is agreed to in writing by the program contract manager. Said invoice should be clearly marked "Final Invoice", thus indicating that all payment obligations of the State under this agreement have ceased and that no further payments are due or outstanding.
- B. The State may, at its discretion, choose not to honor any delinquent final invoice if the Contractor fails to obtain prior written State approval of an alternate final invoice submission deadline. Written State approval shall be sought from the program contract manager prior to the expiration or termination date of this agreement.
- C. The Contractor is hereby advised of its obligation to submit, with the final invoice, a "Contractor's Release (Exhibit ___)" acknowledging submission of the final invoice to the State and certifying the approximate percentage amount, if any, of recycled products used in performance of this agreement.

6. Allowable Line Item Shifts

- A. Cumulative line item shifts of up to \$25,000 or 10% of the annual agreement total may be made, whichever is greater, up to a cumulative annual maximum of \$50,000, provided the annual agreement total does not increase or decrease.
- B. Line item shifts meeting this criteria shall not require a formal agreement amendment.
- C. Contractor shall adhere to State requirements regarding the process to follow in requesting approval to make line item shifts.
- D. Line item shifts may be proposed/requested by either the State or the Contractor.

7. Progress Payment Withholds

This provision replaces and supersedes Provision XX [Insert 11 if Exhibit D(C) is used or 22 if Exhibit D(F) is used] of Special Terms and Conditions Exhibit D(X) [Insert D(F) if federally funded or D(C) if not federally funded.] Payments made under this agreement are considered periodic payments and are not subject to payment withholds.

8. Expense Allowability / Fiscal Documentation

- A. Invoices, received from a Contractor and accepted and/or submitted for payment by the State, shall not be deemed evidence of allowable agreement costs.

Exhibit B**Budget Detail and Payment Provisions**

- B. Contractor shall maintain for review and audit and supply to DHS upon request, adequate documentation of all expenses claimed pursuant to this agreement to permit a determination of expense allowability.
- C. If the allowability or appropriateness of an expense cannot be determined by the State because invoice detail, fiscal records, or backup documentation is nonexistent or inadequate according to generally accepted accounting principles or practices, all questionable costs may be disallowed and payment may be withheld by the State. Upon receipt of adequate documentation supporting a disallowed or questionable expense, reimbursement may resume for the amount substantiated and deemed allowable.
- D. If travel is a reimbursable expense, receipts must be maintained to support the claimed expenditures.
- E. Costs and/or expenses deemed unallowable are subject to recovery by DHS. See provision #9, in this exhibit entitled, "Recovery of Overpayments" for more information.

9. Recovery of Overpayments

- A. Contractor agrees that claims based upon a contractual agreement or an audit finding and/or an audit finding that is appealed and upheld, will be recovered by the State and/or Federal Government by one of the following options:
 - 1) Contractor's remittance to the State of the full amount of the audit exception within 30 days following the State's request for repayment;
 - 2) A repayment schedule which is agreeable to both the State and the Contractor.
- B. The State reserves the right to select which option will be employed and the Contractor will be notified by the State in writing of the claim procedure to be utilized.
- C. Interest on the unpaid balance of the audit finding or debt will accrue at a rate equal to the monthly average of the rate received on investments in the Pooled Money Investment Fund commencing on the date that an audit or examination finding is mailed to the Contractor, beginning 30 days after Contractor's receipt of the State's demand for repayment.
- D. If the Contractor has filed a valid appeal regarding the report of audit findings, recovery of the overpayments will be deferred until a final administrative decision on the appeal has been reached. If the Contractor loses the final administrative appeal, Contractor shall repay, to the State, the over-claimed or disallowed expenses, plus accrued interest. Interest accrues from the Contractor's first receipt of State's notice requesting reimbursement of questioned audit costs or disallowed expenses.

10. Reimbursement Exceptions

- A. Total State reimbursement for each line item identified in any budget exhibit attachment is the maximum amount reimbursable for that line item during the agreement term. CDHS, at its own option, may return disputed invoices to Contractor for correction and resubmission prior to payment or reduce itemized expenses claimed which are not in accordance with Exhibit A, "Scope of Work," any budget exhibit attachment or which cannot be verified as project expenses by Contractor.

Exhibit B

Budget Detail and Payment Provisions

- B. Overtime is not reimbursable under the terms of this agreement unless Contractor has budgeted for overtime expenses in any of the approved Budget Exhibits.
- C. CDHS will only reimburse Contractor for employee vacation and sick leave earned and accrued during the agreement term. Therefore, CDHS will not reimburse Contractor for vacation and/or sick leave taken after the termination of the agreement term, or earned before the agreement term.
- D. Contractor shall not divert, freeze, restrict, or prevent the use of funds received or generated, in whole or in part, for purposes other than conducting the activities described in the approved Scope of Work.

CCC-1005**CERTIFICATION**

I, the official named below, CERTIFY UNDER PENALTY OF PERJURY that I am duly authorized to legally bind the prospective Contractor to the clause(s) listed below. This certification is made under the laws of the State of California.

<i>Contractor/Bidder Firm Name (Printed)</i>		<i>Federal ID Number</i>
<i>By (Authorized Signature)</i>		
<i>Printed Name and Title of Person Signing</i>		
<i>Date Executed</i>	<i>Executed in the County of</i>	

CONTRACTOR CERTIFICATION CLAUSES

1. **STATEMENT OF COMPLIANCE**: Contractor has, unless exempted, complied with the nondiscrimination program requirements. (Gov. Code §12990 (a-f) and CCR, Title 2, Section 8103) (Not applicable to public entities.)

2. **DRUG-FREE WORKPLACE REQUIREMENTS**: Contractor will comply with the requirements of the Drug-Free Workplace Act of 1990 and will provide a drug-free workplace by taking the following actions:

a. Publish a statement notifying employees that unlawful manufacture, distribution, dispensation, possession or use of a controlled substance is prohibited and specifying actions to be taken against employees for violations.

b. Establish a Drug-Free Awareness Program to inform employees about:

- 1) the dangers of drug abuse in the workplace;
- 2) the person's or organization's policy of maintaining a drug-free workplace;
- 3) any available counseling, rehabilitation and employee assistance programs; and,
- 4) penalties that may be imposed upon employees for drug abuse violations.

c. Every employee who works on the proposed Agreement will:

- 1) receive a copy of the company's drug-free workplace policy statement; and,
- 2) agree to abide by the terms of the company's statement as a condition of employment on the Agreement.

Failure to comply with these requirements may result in suspension of payments under the Agreement or termination of the Agreement or both and Contractor may be ineligible for award of any future State agreements if the department determines that any of the following has occurred: the Contractor has made false certification, or violated the

certification by failing to carry out the requirements as noted above. (Gov. Code §8350 et seq.)

3. NATIONAL LABOR RELATIONS BOARD CERTIFICATION: Contractor certifies that no more than one (1) final unappealable finding of contempt of court by a Federal court has been issued against Contractor within the immediately preceding two-year period because of Contractor's failure to comply with an order of a Federal court, which orders Contractor to comply with an order of the National Labor Relations Board. (Pub. Contract Code §10296) (Not applicable to public entities.)

4. CONTRACTS FOR LEGAL SERVICES \$50,000 OR MORE- PRO BONO REQUIREMENT: Contractor hereby certifies that contractor will comply with the requirements of Section 6072 of the Business and Professions Code, effective January 1, 2003.

Contractor agrees to make a good faith effort to provide a minimum number of hours of pro bono legal services during each year of the contract equal to the lessor of 30 multiplied by the number of full time attorneys in the firm's offices in the State, with the number of hours prorated on an actual day basis for any contract period of less than a full year or 10% of its contract with the State.

Failure to make a good faith effort may be cause for non-renewal of a state contract for legal services, and may be taken into account when determining the award of future contracts with the State for legal services.

5. EXPATRIATE CORPORATIONS: Contractor hereby declares that it is not an expatriate corporation or subsidiary of an expatriate corporation within the meaning of Public Contract Code Section 10286 and 10286.1, and is eligible to contract with the State of California.

6. SWEATFREE CODE OF CONDUCT:

a. All Contractors contracting for the procurement or laundering of apparel, garments or corresponding accessories, or the procurement of equipment, materials, or supplies, other than procurement related to a public works contract, declare under penalty of perjury that no apparel, garments or corresponding accessories, equipment, materials, or supplies furnished to the state pursuant to the contract have been laundered or produced in whole or in part by sweatshop labor, forced labor, convict labor, indentured labor under penal sanction, abusive forms of child labor or exploitation of children in sweatshop labor, or with the benefit of sweatshop labor, forced labor, convict labor, indentured labor under penal sanction, abusive forms of child labor or exploitation of children in sweatshop labor. The contractor further declares under penalty of perjury that they adhere to the Sweatfree Code of Conduct as set forth on the California Department of Industrial Relations website located at www.dir.ca.gov, and Public Contract Code Section 6108.

b. The contractor agrees to cooperate fully in providing reasonable access to the contractor's records, documents, agents or employees, or premises if reasonably required by authorized officials of the contracting agency, the Department of Industrial Relations,

or the Department of Justice to determine the contractor's compliance with the requirements under paragraph (a).

7. DOMESTIC PARTNERS: For contracts executed or amended after July 1, 2004, the contractor may elect to offer domestic partner benefits to the contractor's employees in accordance with Public Contract Code section 10295.3. However, the contractor cannot require an employee to cover the costs of providing any benefits which have otherwise been provided to all employees regardless of marital or domestic partner status.

DOING BUSINESS WITH THE STATE OF CALIFORNIA

The following laws apply to persons or entities doing business with the State of California.

1. CONFLICT OF INTEREST: Contractor needs to be aware of the following provisions regarding current or former state employees. If Contractor has any questions on the status of any person rendering services or involved with the Agreement, the awarding agency must be contacted immediately for clarification.

Current State Employees (Pub. Contract Code §10410):

- 1). No officer or employee shall engage in any employment, activity or enterprise from which the officer or employee receives compensation or has a financial interest and which is sponsored or funded by any state agency, unless the employment, activity or enterprise is required as a condition of regular state employment.
- 2). No officer or employee shall contract on his or her own behalf as an independent contractor with any state agency to provide goods or services.

Former State Employees (Pub. Contract Code §10411):

- 1). For the two-year period from the date he or she left state employment, no former state officer or employee may enter into a contract in which he or she engaged in any of the negotiations, transactions, planning, arrangements or any part of the decision-making process relevant to the contract while employed in any capacity by any state agency.
- 2). For the twelve-month period from the date he or she left state employment, no former state officer or employee may enter into a contract with any state agency if he or she was employed by that state agency in a policy-making position in the same general subject area as the proposed contract within the 12-month period prior to his or her leaving state service.

If Contractor violates any provisions of above paragraphs, such action by Contractor shall render this Agreement void. (Pub. Contract Code §10420)

Members of boards and commissions are exempt from this section if they do not receive payment other than payment of each meeting of the board or commission, payment for preparatory time and payment for per diem. (Pub. Contract Code §10430 (e))

2. LABOR CODE/WORKERS' COMPENSATION: Contractor needs to be aware of the provisions which require every employer to be insured against liability for Worker's Compensation or to undertake self-insurance in accordance with the provisions, and Contractor affirms to comply with such provisions before commencing the performance of the work of this Agreement. (Labor Code Section 3700)

3. AMERICANS WITH DISABILITIES ACT: Contractor assures the State that it complies with the Americans with Disabilities Act (ADA) of 1990, which prohibits discrimination on the basis of disability, as well as all applicable regulations and guidelines issued pursuant to the ADA. (42 U.S.C. 12101 et seq.)

4. CONTRACTOR NAME CHANGE: An amendment is required to change the Contractor's name as listed on this Agreement. Upon receipt of legal documentation of the name change the State will process the amendment. Payment of invoices presented with a new name cannot be paid prior to approval of said amendment.

5. CORPORATE QUALIFICATIONS TO DO BUSINESS IN CALIFORNIA:

a. When agreements are to be performed in the state by corporations, the contracting agencies will be verifying that the contractor is currently qualified to do business in California in order to ensure that all obligations due to the state are fulfilled.

b. "Doing business" is defined in R&TC Section 23101 as actively engaging in any transaction for the purpose of financial or pecuniary gain or profit. Although there are some statutory exceptions to taxation, rarely will a corporate contractor performing within the state not be subject to the franchise tax.

c. Both domestic and foreign corporations (those incorporated outside of California) must be in good standing in order to be qualified to do business in California. Agencies will determine whether a corporation is in good standing by calling the Office of the Secretary of State.

6. RESOLUTION: A county, city, district, or other local public body must provide the State with a copy of a resolution, order, motion, or ordinance of the local governing body which by law has authority to enter into an agreement, authorizing execution of the agreement.

7. AIR OR WATER POLLUTION VIOLATION: Under the State laws, the Contractor shall not be: (1) in violation of any order or resolution not subject to review promulgated by the State Air Resources Board or an air pollution control district; (2) subject to cease and desist order not subject to review issued pursuant to Section 13301 of the Water Code for violation of waste discharge requirements or discharge prohibitions; or (3) finally determined to be in violation of provisions of federal law relating to air or water pollution.

8. PAYEE DATA RECORD FORM STD. 204: This form must be completed by all contractors that are not another state agency or other governmental entity.

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Special Terms and Conditions

(Applicable to consultant and personal service contracts)

The use of headings of titles throughout this exhibit is for convenience only and shall not be used to interpret or govern the meaning of any specific term or condition.

This exhibit contains provisions that require strict adherence to various contracting laws and policies. Some provisions herein are conditional and only apply if specified conditions exist (i.e., agreement total exceeds a certain amount; agreement is federally funded, etc.). The provisions herein apply to this agreement unless the provisions are removed by reference on the face of the agreement, the provisions are superseded by an alternate provision appearing elsewhere in the agreement, or the applicable conditions do not exist.

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1. Travel and Per Diem Reimbursement

(Applicable if travel and/or per diem expenses are reimbursed with contract funds.)

Reimbursement for travel and per diem expenses from the California Department of Health Services (CDHS) under this agreement shall, unless otherwise specified in this agreement, be at the rates currently in effect, as established by the California Department of Personnel Administration (DPA), for nonrepresented state employees as stipulated in CDHS' Travel Reimbursement Information Exhibit. If the DPA rates change during the term of the agreement, the new rates shall apply upon their effective date and no amendment to this agreement shall be necessary. Exceptions to DPA rates may be approved by CDHS upon the submission of a statement by the Contractor indicating that such rates are not available to the Contractor. No travel outside the State of California shall be reimbursed without prior authorization from CDHS. Verbal authorization should be confirmed in writing. Written authorization may be in a form including fax or email confirmation.

2. Site Inspection

The State, through any authorized representatives, has the right at all reasonable times to inspect or otherwise evaluate the work performed or being performed hereunder including subcontract supported activities and the premises in which it is being performed. If any inspection or evaluation is made of the premises of the Contractor or Subcontractor, the Contractor shall provide and shall require Subcontractors to provide all reasonable facilities and assistance for the safety and convenience of the authorized representatives in the performance of their duties. All inspections and evaluations shall be performed in such a manner as will not unduly delay the work.

3. Intellectual Property Rights

a. Ownership

- (1) Except where CDHS has agreed in a signed writing to accept a license, CDHS shall be and remain, without additional compensation, the sole owner of any and all rights, title and interest in all Intellectual Property, from the moment of creation, whether or not jointly conceived, that are made, conceived, derived from, or reduced to practice by Contractor or CDHS and which result directly or indirectly from this agreement.
- (2) For the purposes of this agreement, Intellectual Property means recognized protectable rights and interest such as: patents, (whether or not issued) copyrights, trademarks, service marks, applications for any of the foregoing, inventions, trade secrets, trade dress, logos, insignia, color combinations, slogans, moral rights, right of publicity, author's rights, contract and licensing rights, works, mask works, industrial design rights, rights of priority, know how, design flows, methodologies, devices, business processes, developments, innovations, good will and all other legal rights protecting intangible proprietary information as may exist now and/or here after come into existence, and all renewals and extensions, regardless of whether those rights arise under the laws of the United States, or any other state, country or jurisdiction.
 - (a) For the purposes of the definition of Intellectual Property, "works" means all literary works, writings and printed matter including the medium by which they are recorded or reproduced, photographs, art work, pictorial and graphic representations and works of a similar nature, film, motion pictures, digital images, animation cells, and other audiovisual works including positives and negatives thereof, sound recordings, tapes, educational materials, interactive videos and any other materials or products created, produced, conceptualized and fixed in a tangible medium of expression. It includes preliminary and final products and any materials and information developed for the purposes of producing those final products. Works does not include articles submitted to peer review or reference journals or independent research projects.
- (3) In the performance of this agreement, Contractor will exercise and utilize certain of its Intellectual Property in existence prior to the effective date of this agreement. In addition, under this agreement, Contractor may access and utilize certain of CDHS' Intellectual Property in existence prior to the effective date of this agreement. Except as otherwise set forth herein, Contractor shall not use any of CDHS' Intellectual Property now existing or hereafter existing for any purposes without the prior written permission of CDHS. **Except as otherwise set forth herein, neither the Contractor nor CDHS shall give any ownership interest in or rights to its Intellectual Property to the other**

Party. If during the term of this agreement, Contractor accesses any third-party Intellectual Property that is licensed to CDHS, Contractor agrees to abide by all license and confidentiality restrictions applicable to CDHS in the third-party's license agreement.

- (4) Contractor agrees to cooperate with CDHS in establishing or maintaining CDHS' exclusive rights in the Intellectual Property, and in assuring CDHS' sole rights against third parties with respect to the Intellectual Property. If the Contractor enters into any agreements or subcontracts with other parties in order to perform this agreement, Contractor shall require the terms of the agreement(s) to include all Intellectual Property provisions. Such terms must include, but are not limited to, the subcontractor assigning and agreeing to assign to CDHS all rights, title and interest in Intellectual Property made, conceived, derived from, or reduced to practice by the subcontractor, Contractor or CDHS and which result directly or indirectly from this agreement or any subcontract.
- (5) Contractor further agrees to assist and cooperate with CDHS in all reasonable respects, and execute all documents and, subject to reasonable availability, give testimony and take all further acts reasonably necessary to acquire, transfer, maintain, and enforce CDHS' Intellectual Property rights and interests.

b. Retained Rights / License Rights

- (1) Except for Intellectual Property made, conceived, derived from, or reduced to practice by Contractor or CDHS and which result directly or indirectly from this agreement, Contractor shall retain title to all of its Intellectual Property to the extent such Intellectual Property is in existence prior to the effective date of this agreement. Contractor hereby grants to CDHS, without additional compensation, a permanent, non-exclusive, royalty free, paid-up, worldwide, irrevocable, perpetual, non-terminable license to use, reproduce, manufacture, sell, offer to sell, import, export, modify, publicly and privately display/perform, distribute, and dispose Contractor's Intellectual Property with the right to sublicense through multiple layers, for any purpose whatsoever, to the extent it is incorporated in the Intellectual Property resulting from this agreement, unless Contractor assigns all rights, title and interest in the Intellectual Property as set forth herein.
- (2) Nothing in this provision shall restrict, limit, or otherwise prevent Contractor from using any ideas, concepts, know-how, methodology or techniques related to its performance under this agreement, provided that Contractor's use does not infringe the patent, copyright, trademark rights, license or other Intellectual Property rights of CDHS or third party, or result in a breach or default of any provisions of this Exhibit or result in a breach of any provisions of law relating to confidentiality.

c. Copyright

- (1) Contractor agrees that for purposes of copyright law, all works [as defined in Section a, subparagraph (2)(a)] of authorship made by or on behalf of Contractor in connection with Contractor's performance of this agreement shall be deemed "works made for hire". Contractor further agrees that the work of each person utilized by Contractor in connection with the performance of this agreement will be a "work made for hire," whether that person is an employee of Contractor or that person has entered into an agreement with Contractor to perform the work. Contractor shall enter into a written agreement with any such person that: (i) all work performed for Contractor shall be deemed a "work made for hire" under the Copyright Act and (ii) that person shall assign all right, title, and interest to CDHS to any work product made, conceived, derived from, or reduced to practice by Contractor or CDHS and which result directly or indirectly from this agreement.
- (2) All materials, including, but not limited to, visual works or text, reproduced or distributed pursuant to this agreement that include Intellectual Property made, conceived, derived from, or reduced to practice by Contractor or CDHS and which result directly or indirectly from this agreement, shall include CDHS' notice of copyright, which shall read in 3mm or larger typeface: "© [Enter Current Year e.g., 2006, etc.], California Department of Health Services. This material may not be reproduced or disseminated without prior written permission from the California Department of Health Services." This notice should be placed prominently on the materials and set apart from other matter on the page where it appears. Audio productions shall contain a similar audio notice of copyright.

d. Patent Rights

With respect to inventions made by Contractor in the performance of this agreement, which did not result from research and development specifically included in the agreement's scope of work, Contractor hereby grants to CDHS a license as described under Paragraph b of this provision for devices or material incorporating, or made through the use of such inventions. If such inventions result from research and development work specifically included within the agreement's scope of work, then Contractor agrees to assign to CDHS, without additional compensation, all its right, title and interest in and to such inventions and to assist CDHS in securing United States and foreign patents with respect thereto.

e. Third-Party Intellectual Property

Except as provided herein, Contractor agrees that its performance of this agreement shall not be dependent upon or include any Intellectual Property of Contractor or third party without first: (i) obtaining CDHS' prior written approval; and (ii) granting to or obtaining for CDHS, without additional compensation, a license, as described in Paragraph b of this provision, for any of Contractor's or third-party's Intellectual Property in existence prior to the effective date of this agreement. If such a license upon the these terms is unattainable, and CDHS determines that the Intellectual Property should be included in or is required for Contractor's performance of this agreement, Contractor shall obtain a license under terms acceptable to CDHS.

f. Warranties

(1) Contractor represents and warrants that:

- (a) It is free to enter into and fully perform this agreement.
- (b) It has secured and will secure all rights and licenses necessary for its performance of this agreement.
- (c) Neither Contractor's performance of this agreement, nor the exercise by either Party of the rights granted in this agreement, nor any use, reproduction, manufacture, sale, offer to sell, import, export, modification, public and private display/performance, distribution, and disposition of the Intellectual Property made, conceived, derived from, or reduced to practice by Contractor or CDHS and which result directly or indirectly from this agreement will infringe upon or violate any Intellectual Property right, non-disclosure obligation, or other proprietary right or interest of any third-party or entity now existing under the laws of, or hereafter existing or issued by, any state, the United States, or any foreign country. There is currently no actual or threatened claim by any such third party based on an alleged violation of any such right by Contractor.
- (d) Neither Contractor's performance nor any part of its performance will violate the right of privacy of, or constitute a libel or slander against any person or entity.
- (e) It has secured and will secure all rights and licenses necessary for Intellectual Property including, but not limited to, consents, waivers or releases from all authors of music or performances used, and talent (radio, television and motion picture talent), owners of any interest in and to real estate, sites, locations, property or props that may be used or shown.
- (f) It has not granted and shall not grant to any person or entity any right that would or might derogate, encumber, or interfere with any of the rights granted to CDHS in this agreement.
- (g) It has appropriate systems and controls in place to ensure that state funds will not be used in the performance of this agreement for the acquisition, operation or maintenance of computer software in violation of copyright laws.
- (h) It has no knowledge of any outstanding claims, licenses or other charges, liens, or encumbrances of any kind or nature whatsoever that could affect in any way Contractor's performance of this agreement.

- (2) CDHS MAKES NO WARRANTY THAT THE INTELLECTUAL PROPERTY RESULTING FROM THIS AGREEMENT DOES NOT INFRINGE UPON ANY PATENT, TRADEMARK, COPYRIGHT OR THE LIKE, NOW EXISTING OR SUBSEQUENTLY ISSUED.

g. Intellectual Property Indemnity

- (1) Contractor shall indemnify, defend and hold harmless CDHS and its licensees and assignees, and its officers, directors, employees, agents, representatives, successors, and users of its products, ("Indemnitees") from and against all claims, actions, damages, losses, liabilities (or actions or proceedings with respect to any thereof), whether or not rightful, arising from any and all actions or claims by any third party or expenses related thereto (including, but not limited to, all legal expenses, court costs, and attorney's fees incurred in investigating, preparing, serving as a witness in, or defending against, any such claim, action, or proceeding, commenced or threatened) to which any of the Indemnitees may be subject, whether or not Contractor is a party to any pending or threatened litigation, which arise out of or are related to (i) the incorrectness or breach of any of the representations, warranties, covenants or agreements of Contractor pertaining to Intellectual Property; or (ii) any Intellectual Property infringement, or any other type of actual or alleged infringement claim, arising out of CDHS' use, reproduction, manufacture, sale, offer to sell, distribution, import, export, modification, public and private performance/display, license, and disposition of the Intellectual Property made, conceived, derived from, or reduced to practice by Contractor or CDHS and which result directly or indirectly from this agreement. This indemnity obligation shall apply irrespective of whether the infringement claim is based on a patent, trademark or copyright registration that issued after the effective date of this agreement. CDHS reserves the right to participate in and/or control, at Contractor's expense, any such infringement action brought against CDHS.
- (2) Should any Intellectual Property licensed by the Contractor to CDHS under this agreement become the subject of an Intellectual Property infringement claim, Contractor will exercise its authority reasonably and in good faith to preserve CDHS' right to use the licensed Intellectual Property in accordance with this agreement at no expense to CDHS. CDHS shall have the right to monitor and appear through its own counsel (at Contractor's expense) in any such claim or action. In the defense or settlement of the claim, Contractor may obtain the right for CDHS to continue using the licensed Intellectual Property; or, replace or modify the licensed Intellectual Property so that the replaced or modified Intellectual Property becomes non-infringing provided that such replacement or modification is functionally equivalent to the original licensed Intellectual Property. If such remedies are not reasonably available, CDHS shall be entitled to a refund of all monies paid under this agreement, without restriction or limitation of any other rights and remedies available at law or in equity.
- (3) Contractor agrees that damages alone would be inadequate to compensate CDHS for breach of any term of this Intellectual Property Exhibit by Contractor. Contractor acknowledges CDHS would suffer irreparable harm in the event of such breach and agrees CDHS shall be entitled to obtain equitable relief, including without limitation an injunction, from a court of competent jurisdiction, without restriction or limitation of any other rights and remedies available at law or in equity.

h. Federal Funding

In any agreement funded in whole or in part by the federal government, CDHS may acquire and maintain the Intellectual Property rights, title, and ownership, which results directly or indirectly from the agreement; except as provided in 37 Code of Federal Regulations part 401.14; however, the federal government shall have a non-exclusive, nontransferable, irrevocable, paid-up license throughout the world to use, duplicate, or dispose of such Intellectual Property throughout the world in any manner for governmental purposes and to have and permit others to do so.

i. Survival

The provisions set forth herein shall survive any termination or expiration of this agreement or any project schedule.

4. Use of Disabled Veteran Business Enterprises (DVBE)

(Applicable to agreements valued at \$10,000 or more in which the agreement requires actual DVBE participation. Not applicable to agreements and amendments administratively exempted from DVBE requirements by CDHS.)

- a. The State Legislature has declared that a fair portion of the total purchases and contracts or subcontracts for property and services for the State be placed with disabled veteran business enterprises.
- b. All DVBE participation attachments, however labeled, completed as a condition of bidding, contracting, or amending a subject agreement, are incorporated herein and made a part of this agreement by this reference.
- c. Contractor agrees to use the proposed DVBEs, as identified in previously submitted DVBE participation attachments, unless the Contractor submits a written request for substitution of a like or alternate subcontractor. All requests for substitution must be approved by CDHS, in writing, prior to using a substituted subcontractor.
- d. Requests for substitution must be approved by the program funding this agreement and must include:
 - (1) A written explanation of the reason for the substitution.
 - (2) A written description of the business enterprise that will be substituted, including its DVBE certification status.
 - (3) If applicable, the reason a non-DVBE subcontractor is proposed for use.
 - (4) A written description of the work to be performed by the substituted subcontractor and an identification of the percentage share/dollar amount of the overall contract that the substituted subcontractor will perform.
- e. If requested by CDHS, Contractor agrees to provide verification, in a form agreed to by CDHS, that DVBE subcontractor participation under this agreement is in compliance with the goals specified at the time of contract award or in an applicable amendment.

5. Confidentiality of Information

- a. The Contractor and its employees, agents, or subcontractors shall protect from unauthorized disclosure names and other identifying information concerning persons either receiving services pursuant to this agreement or persons whose names or identifying information become available or are disclosed to the Contractor, his/her employees, agents, or subcontractors as a result of services performed under this agreement, except for statistical information not identifying any such person.
- b. The Contractor and its employees, agents, or subcontractors shall not use such identifying information for any purpose other than carrying out the Contractor's obligations under this agreement.
- c. The Contractor and its employees, agents, or subcontractors shall promptly transmit to the CDHS program contract manager all requests for disclosure of such identifying information not emanating from the client or person.
- d. The Contractor shall not disclose, except as otherwise specifically permitted by this agreement or authorized by the client, any such identifying information to anyone other than CDHS without prior written authorization from the CDHS program contract manager, except if disclosure is required by State or Federal law.
- e. For purposes of this provision, identity shall include, but not be limited to name, identifying number, symbol, or other identifying particular assigned to the individual, such as finger or voice print or a photograph.

6. Documents, Publications and Written Reports

(Applicable to agreements over \$5,000 under which publications, written reports, and documents are developed or produced. Government Code Section 7550.)

Any document, publication or written report (excluding progress reports, financial reports and normal contract communications) prepared as a requirement of this agreement shall contain, in a separate section preceding the main body of the document, the number and dollar amounts of all contracts and subcontracts relating to the preparation of such document or report, if the total cost for work by nonemployees of the State exceeds \$5,000.

7. Subcontract Requirements

(Applicable to agreements under which services are to be performed by subcontractors including independent consultants.)

- a. Prior written authorization will be required before the Contractor enters into or is reimbursed for any subcontract for services costing \$5,000 or more. Except as indicated in paragraph a(3) herein, when securing subcontracts for services exceeding \$5,000, the Contractor shall obtain at least three bids or justify a sole source award.

(1) The Contractor must provide in its request for authorization, all information necessary for evaluating the necessity or desirability of incurring such cost.

(2) The State may identify the information needed to fulfill this requirement.

(3) Subcontracts performed by the entities or for the service types listed below are exempt from the bidding and sole source justification requirements:

- (a) A local governmental entity or the federal government,
- (b) A State college or university from any State,
- (c) A Joint Powers Authority,
- (d) An auxiliary organization of a California State University or a California Community college,
- (e) A foundation organized to support the Board of Governors of the California Community Colleges,
- (f) An auxiliary organization of the Student Aid Commission established under Education Code § 69522,
- (g) Entities of any type that will provide subvention aid or direct services to the public,
- (h) Entities and/or service types identified as exempt from advertising in State Administrative Manual Section 1233 subsection 3. View this publication at the following Internet address: <http://sam.dgs.ca.gov>.
- (i) Entities whose name and budgeted costs have been submitted to CDHS in response to a competitive Invitation for Bid or Request for Proposal.

b. Agreements with governmental or public entities and their auxiliaries, or a Joint Powers Authority

- (1) If the total amount of all subcontracts exceeds twenty-five percent (25%) of the total agreement amount or \$50,000, whichever is less and each subcontract is not with an entity or of a service type described in paragraph a(3) herein, CDHS shall:

- (a) Obtain approval from the Department of General Services to use said subcontracts, or

- (b) If applicable, obtain a certification from the prime Contractor indicating that each subcontractor was selected pursuant to a competitive bidding process requiring at least three bids from responsible bidders, or
 - (c) Obtain approval from the Secretary of the California Health and Human Services Agency to use said subcontracts.
- (2) When the conditions of b(1) apply, each subcontract that is not with a type of entity or of a service type described in paragraph a(3) herein, shall not commence work before CDHS has obtained applicable prior approval to use said subcontractor. CDHS shall inform the Contractor when CDHS has obtained appropriate approval to use said subcontractors.
- c. CDHS reserves the right to approve or disapprove the selection of subcontractors and with advance written notice, require the substitution of subcontractors and require the Contractor to terminate subcontracts entered into in support of this agreement.
 - (1) Upon receipt of a written notice from CDHS requiring the substitution and/or termination of a subcontract, the Contractor shall take steps to ensure the completion of any work in progress and select a replacement, if applicable, within 30 calendar days, unless a longer period is agreed to by CDHS.
- d. Actual subcontracts (i.e., written agreement between the Contractor and a subcontractor) of \$5,000 or more are subject to the prior review and written approval of CDHS. CDHS may, at its discretion, elect to waive this right. All such waivers shall be confirmed in writing by CDHS.
- e. Contractor shall maintain a copy of each subcontract entered into in support of this agreement and shall, upon request by CDHS, make copies available for approval, inspection, or audit.
- f. CDHS assumes no responsibility for the payment of subcontractors used in the performance of the agreement. Contractor accepts sole responsibility for the payment of subcontractors used in the performance of this agreement.
- g. The Contractor is responsible for all performance requirements under this agreement even though performance may be carried out through a subcontract.
- h. When entering into a consulting service agreement with CDHS, the Contractor may be required to supply budget detail for each subcontractor and/or each major subcontracted activity under this agreement.
 - (1) Budget detail format and submission requirements will be determined by CDHS.
 - (2) Methods of including budget detail in this agreement, if applicable, will be determined by CDHS.
 - (3) Any subcontractor budget detail displayed in this agreement, or incorporated by reference, is included for information purposes only. Changes to a subcontractor's identity or budget detail shall not require the processing of a formal amendment to this agreement.
- i. The Contractor shall ensure that all subcontracts for services include provision(s) requiring compliance with applicable terms and conditions specified in this agreement.
- j. The Contractor agrees to include the following clause, relevant to record retention, in all subcontracts for services:

"(Subcontractor Name) agrees to maintain and preserve, until three years after termination of (Agreement Number) and final payment from CDHS to the Contractor, to permit CDHS or any duly authorized representative, to have access to, examine or audit any pertinent books, documents, papers and records related to this subcontract and to allow interviews of any employees who might reasonably have information related to such records."
- k. Unless otherwise stipulated in writing by CDHS, the Contractor shall be the subcontractor's sole point of contact for all matters related to performance and payment under this agreement.

- I. Contractor shall, as applicable, advise all subcontractors of their obligations pursuant to the following numbered provisions of this exhibit: 1, 2, 3, 4, 5, 6, 7, 11, 17, 18, and 19.

8. Dispute Resolution Process

A Contractor grievance exists whenever there is a dispute arising from CDHS' action in the administration of an agreement. If there is a dispute or grievance between the Contractor and CDHS, the Contractor must seek resolution using the procedure outlined below.

- a. The Contractor should first informally discuss the problem with the CDHS program contract manager. If the problem cannot be resolved informally, the Contractor must direct the grievance together with any evidence, in writing, to the program Branch Chief. The grievance must state the issues in dispute, the legal authority or other basis for the Contractor's position and the remedy sought. The Branch Chief must render a decision within ten (10) working days after receipt of the written grievance from the Contractor. The Branch Chief shall respond in writing to the Contractor indicating the decision and reasons therefor. If the Contractor disagrees with the Branch Chief's decision, the Contractor may appeal to the second level.
- b. When appealing to the second level the Contractor must prepare an appeal indicating the reasons for disagreement with the Branch Chief's decision. The Contractor shall include with the appeal a copy of the Contractor's original statement of dispute along with any supporting evidence and a copy of the Branch Chief's decision. The appeal shall be addressed to the Deputy Director of the division in which the branch is organized within ten (10) working days from receipt of the Branch Chief's decision. The Deputy Director of the division in which the branch is organized or his/her designee shall meet with the Contractor to review the issues raised. A written decision signed by the Deputy Director of the division in which the branch is organized or his/her designee shall be directed to the Contractor within twenty (20) working days of receipt of the Contractor's second level appeal. The decision rendered by the Deputy Director or his/her designee shall be the final administrative determination of the Department.
- c. Unless otherwise stipulated in writing by CDHS, all dispute, grievance and/or appeal correspondence shall be directed to the CDHS program contract manager.
- d. There are organizational differences within CDHS' funding programs and the management levels identified in this dispute resolution provision may not apply in every contractual situation. When a grievance is received and organizational differences exist, the Contractor shall be notified in writing by the CDHS program contract manager of the level, name, and/or title of the appropriate management official that is responsible for issuing a decision at a given level.

9. Performance Evaluation

(Applicable only to consultant service agreements.)

- a. The Contractor's performance under this agreement shall be evaluated at the conclusion of the term of this agreement. The evaluation shall include, but not be limited to:
 - (1) Whether the contracted work or services were completed as specified in the agreement and reasons for and amount of any cost overruns.
 - (2) Whether the contracted work or services met the quality standards specified in the agreement.
 - (3) Whether the Contractor fulfilled all requirements of the agreement.
 - (4) Factors outside the control of the Contractor, which caused difficulties in contractor performance. Factors outside the control of the Contractor shall not include a Subcontractor's poor performance.
- b. The evaluation of the Contractor shall not be a public record.

10. Progress Reports or Meetings

(Applicable only to consultant service agreements.)

- a. Contractor shall submit progress reports or attend meetings with state personnel at intervals determined by CDHS to determine if the Contractor is on the right track, whether the project is on schedule, provide communication of interim findings, and afford occasions for airing difficulties or special problems encountered so that remedies can be developed quickly.
- b. At the conclusion of this agreement and if applicable, Contractor shall hold a final meeting at which Contractor shall present any findings, conclusions, and recommendations. If required by this agreement, Contractor shall submit a comprehensive final report.

11. Progress Payment Withholds

- a. Progress payments may not be made more frequently than monthly in arrears for work performed and costs incurred in the performance of the agreement. In the aggregate, progress payments may not exceed 90 percent of the total agreement amount, regardless of agreement length.
- b. Ten percent (10%) may be withheld by CDHS from each invoice submitted for reimbursement, under the following conditions:
 - (1) For services and costs associated with contractor and/or subcontractor performance that is considered to be of an ongoing nature or performed continuously throughout the term of the agreement.
 - (2) For individual services associated with a specific agreement deliverable that has not yet been received or completed in its entirety.
 - (3) For individual and/or distinct tasks, work plans, or project activities that have not yet been completed in their entirety.

- c. Release of Amounts Withheld

As individual and/or distinct tasks, services, work plans, or project activities are completed in their entirety by either the Contractor or Subcontractor and any scheduled/required deliverables or reports are delivered to CDHS; then any funds so withheld may be released to the Contractor upon acceptance and/or acknowledgement that all such items have been completed to the full satisfaction of CDHS.

- d. Payment Requests Excluded from the 10 Percent (10%) Withhold

Ten percent (10%) payment withholds shall not be applied to reimbursements or periodic payment requests for direct costs associated with equipment purchases, media buys, operating expense items, and other procurements not directly associated with the Contractor's personal performance.

12. Novation Requirements

If the Contractor proposes any novation agreement, CDHS shall act upon the proposal within 60 days after receipt of the written proposal. CDHS may review and consider the proposal, consult and negotiate with the Contractor, and accept or reject all or part of the proposal. Acceptance or rejection of the proposal may be made orally within the 60-day period and confirmed in writing within five days of said decision. Upon written acceptance of the proposal, CDHS will initiate an amendment to this agreement to formally implement the approved proposal.

13. Legal Services Contract Requirements

(Applicable only to agreements involving the performance of legal services.)

The Contractor shall:

- a. Adhere to legal cost and billing guidelines designated by CDHS.
- b. Adhere to litigation plans designated by CDHS.
- c. Adhere to case phasing of activities designated by CDHS.

- d. Submit and adhere to legal budgets as designated by CDHS.
- e. Maintain legal malpractice insurance in an amount not less than the amount designated by CDHS. Said amount shall be indicated in a separate letter to the Contractor.
- f. Submit to legal bill audits and law firm audits if requested by CDHS. Such audits may be conducted by State employees or its designees or by any legal cost control providers retained by CDHS for such purpose.

14. Four-Digit Date Compliance

(Applicable to agreements in which Information Technology (IT) services are provided to CDHS or if IT equipment is procured.)

Contractor warrants that it will provide only Four-Digit Date Compliant. Deliverables and/or services to the State. "Four Digit Date compliant" Deliverables and services can accurately process, calculate, compare, and sequence date data, including without limitation date data arising out of or relating to leap years and changes in centuries. This warranty and representation is subject to the warranty terms and conditions of this Contract and does not limit the generality of warranty obligations set forth elsewhere herein.

15. Prohibited Use of State Funds for Software

(Applicable to agreements in which computer software is used in performance of the work.)

Contractor certifies that it has appropriate systems and controls in place to ensure that state funds will not be used in the performance of this agreement for the acquisition, operation or maintenance of computer software in violation of copyright laws.

16. Insurance Requirements

[Applicable to agreements involving the performance of hazardous activities (i.e., transportation of persons or State property, handling of toxic or hazardous substances, elevator maintenance, facility repair, and other agreements when stipulated by CDHS, etc.)]

Contractor shall comply with the following insurance requirements:

a. Commercial General Liability

The Contractor must furnish to CDHS a certificate of insurance stating that commercial general liability insurance of not less than \$1,000,000 per occurrence for bodily injury and property damage liability combined is presently in effect for the Contractor. The commercial general liability insurance policy shall include coverage for liabilities arising out of premises, operations, independent contractors, products, completed operations, personal and advertising injury, and liability assumed under an insured agreement. The commercial general liability insurance shall apply separately to each insured against whom claim is made or suit is brought subject to the Contractor's limit of liability. Paragraphs 16c, 16d, 16e, and 16f also apply to Commercial General Liability insurance.

b. Pollution Liability

(Applicable only when services involve the handling of toxic or hazardous substances.)

Contractor shall maintain Pollution Liability insurance covering the Contractor's liability for bodily injury, property damage and environmental damage resulting from pollution and related cleanup costs incurred, all arising out of the work or services performed under this agreement. Coverage shall be provided for both work performed on-site, as well as during the transport of hazardous materials. Limits of not less than \$1,000,000 shall be provided. Paragraphs 16c, 16d, 16e, and 16f also apply to Pollution Liability insurance.

- c. The certificate of insurance must be issued by an insurance company acceptable to the Department of General Services (DGS) Office of Risk and Insurance Management or be provided through partial or total self-insurance acceptable to DGS.
- d. The certificate of insurance must include the following provisions:
 - (1) The insurer will not cancel the insured's coverage without giving 30 days prior written notice to the California Department of Health Services, and
 - (2) The State of California, its officers, agents, employees, and servants are included as additional insureds, but only with respect to work performed for the State of California under this agreement.
- e. The Contractor agrees that the insurance required herein will remain in effect at all times during the term of this agreement. In the event said insurance coverage expires at any time or times during the term of this agreement, the Contractor agrees to provide, at least 30 calendar days before said expiration date, a new certificate of insurance evidencing insurance coverage as provided for herein for not less than the remainder of the term of this agreement or for a period of not less than one year. New certificates of insurance are subject to the approval of DGS, and the Contractor agrees that no work or services shall be performed prior to such approval. CDHS may, in addition to any other remedies it may have, terminate this agreement on the occurrence of such event.
- f. CDHS will not be responsible for any premiums, deductibles, or assessments on any insurance policy.

17. Procurement Rules

(Applicable to all agreements in which equipment, miscellaneous property, commodities and/or supplies are furnished by CDHS or expenses for said items are reimbursed with agreement funds.)

a. Equipment definitions

Wherever the term equipment and/or miscellaneous property are used, the following definitions shall apply:

- (1) **Major equipment:** A tangible or intangible item having a base unit cost of \$5,000 or more with a life expectancy of one (1) year or more and is either furnished by CDHS or the cost is reimbursed through this agreement. Software and videos are examples of intangible items that meet this definition.
 - (2) **Minor equipment:** A tangible item having a base unit cost of less than \$5,000 with a life expectancy of one (1) year or more that is listed on the CDHS Asset Management Unit's Minor Equipment List and is either furnished by CDHS or the cost is reimbursed through this agreement. Contractors may obtain a copy of the Minor Equipment List by making a request through the CDHS program contract manager.
 - (3) **Miscellaneous property:** A specific tangible item with a life expectancy of one (1) year or more that is either furnished by CDHS or the cost is reimbursed through this agreement. Examples include, but are not limited to: furniture (excluding modular furniture), cabinets, typewriters, desktop calculators, portable dictators, non-digital cameras, etc.
- b. **Government and public entities** (including state colleges/universities and auxiliary organizations), whether acting as a contractor and/or subcontractor, may secure all commodities, supplies, equipment and services related to such purchases that are required in performance of this agreement. Said procurements are subject to Paragraphs d through h of Provision 17. Paragraph c of Provision 17 shall also apply, if equipment purchases are delegated to subcontractors that are nonprofit organizations or commercial businesses.
 - c. **Nonprofit organizations and commercial businesses**, whether acting as a contractor and/or subcontractor, may secure commodities, supplies, equipment and services related to such purchases for performance under this agreement.
 - (1) Equipment purchases shall not exceed \$50,000 annually.

To secure equipment above the annual maximum limit of \$50,000, the Contractor shall make arrangements through the appropriate CDHS program contract manager, to have all remaining equipment purchased through CDHS' Purchasing Unit. The cost of equipment purchased by or through CDHS shall be deducted from the funds available in this agreement. Contractor shall submit to the CDHS program contract manager a list of equipment specifications for those items that the State must procure. The State may pay the vendor directly for such arranged equipment purchases and title to the equipment will remain with CDHS. The equipment will be delivered to the Contractor's address, as stated on the face of the agreement, unless the Contractor notifies the CDHS program contract manager, in writing, of an alternate delivery address.

- (2) All equipment purchases are subject to Paragraphs d through h of Provision 17. Paragraph b of Provision 17 shall also apply, if equipment purchases are delegated to subcontractors that are either a government or public entity.
- (3) Nonprofit organizations and commercial businesses, shall use a procurement system that meets the following standards:
 - (a) Maintain a code or standard of conduct that shall govern the performance of its officers, employees, or agents engaged in awarding procurement contracts. No employee, officer, or agent shall participate in the selection, award, or administration of a procurement contract in which, to his or her knowledge, he or she has a financial interest.
 - (b) Procurements shall be conducted in a manner that provides, to the maximum extent practical, open, and free competition.
 - (c) Procurements shall be conducted in a manner that provides for all of the following:
 - [1] Avoid purchasing unnecessary or duplicate items.
 - [2] Equipment solicitations shall be based upon a clear and accurate description of the technical requirements of the goods to be procured.
 - [3] Take positive steps to utilize small and veteran owned businesses.
- d. Unless waived or otherwise stipulated in writing by CDHS, prior written authorization from the appropriate CDHS program contract manager will be required before the Contractor will be reimbursed for any purchase of \$5,000 or more for commodities, supplies, equipment, and services related to such purchases. The Contractor must provide in its request for authorization all particulars necessary, as specified by CDHS, for evaluating the necessity or desirability of incurring such costs. The term "purchase" excludes the purchase of services from a subcontractor and public utility services at rates established for uniform applicability to the general public.
- e. In special circumstances, determined by CDHS (e.g., when CDHS has a need to monitor certain purchases, etc.), CDHS may require prior written authorization and/or the submission of paid vendor receipts for any purchase, regardless of dollar amount. CDHS reserves the right to either deny claims for reimbursement or to request repayment for any Contractor and/or subcontractor purchase that CDHS determines to be unnecessary in carrying out performance under this agreement.
- f. The Contractor and/or subcontractor must maintain a copy or narrative description of the procurement system, guidelines, rules, or regulations that will be used to make purchases under this agreement. The State reserves the right to request a copy of these documents and to inspect the purchasing practices of the Contractor and/or subcontractor at any time.
- g. For all purchases, the Contractor and/or subcontractor must maintain copies of all paid vendor invoices, documents, bids and other information used in vendor selection, for inspection or audit. Justifications supporting the absence of bidding (i.e., sole source purchases) shall also be maintained on file by the Contractor and/or subcontractor for inspection or audit.
- h. CDHS may, with cause (e.g., with reasonable suspicion of unnecessary purchases or use of inappropriate purchase practices, etc.), withhold, cancel, modify, or retract the delegated purchase authority granted

under Paragraphs b and/or c of Provision 17 by giving the Contractor no less than 30 calendar days written notice.

18. Equipment Ownership / Inventory / Disposition

(Applicable to agreements in which equipment and/or miscellaneous property is furnished by CDHS and/or when said items are purchased or reimbursed with agreement.)

- a. Wherever the term equipment and/or miscellaneous property is used in Provision 18, the definitions in Provision 17, Paragraph a shall apply.

Unless otherwise stipulated in this agreement, all equipment and/or miscellaneous property that are purchased/reimbursed with agreement funds or furnished by CDHS under the terms of this agreement shall be considered state equipment and the property of CDHS.

- (1) CDHS requires the reporting, tagging and annual inventorying of all equipment and/or miscellaneous property that is furnished by CDHS or purchased/reimbursed with funds provided through this agreement.

Upon receipt of equipment and/or miscellaneous property, the Contractor shall report the receipt to the CDHS program contract manager. To report the receipt of said items and to receive property tags, Contractor shall use a form or format designated by CDHS' Asset Management Unit. If the appropriate form (i.e., Contractor Equipment Purchased with CDHS Funds) does not accompany this agreement, Contractor shall request a copy from the CDHS program contract manager.

- (2) If the Contractor enters an agreement with a term of more than twelve months, the Contractor shall submit an annual inventory of state equipment and/or miscellaneous property to the CDHS program contract manager using a form or format designated by CDHS' Asset Management Unit. If an inventory report form (i.e., Inventory/Disposition of CDHS-Funded Equipment) does not accompany this agreement, Contractor shall request a copy from the CDHS program contract manager. Contractor shall:

- (a) Include in the inventory report, equipment and/or miscellaneous property in the Contractor's possession and/or in the possession of a subcontractor (including independent consultants).
 - (b) Submit the inventory report to CDHS according to the instructions appearing on the inventory form or issued by the CDHS program contract manager.
 - (c) Contact the CDHS program contract manager to learn how to remove, trade-in, sell, transfer or survey off, from the inventory report, expired equipment and/or miscellaneous property that is no longer wanted, usable or has passed its life expectancy. Instructions will be supplied by CDHS' Asset Management Unit.
- b. Title to state equipment and/or miscellaneous property shall not be affected by its incorporation or attachment to any property not owned by the State.
- c. Unless otherwise stipulated, CDHS shall be under no obligation to pay the cost of restoration, or rehabilitation of the Contractor's and/or Subcontractor's facility which may be affected by the removal of any state equipment and/or miscellaneous property.
- d. The Contractor and/or Subcontractor shall maintain and administer a sound business program for ensuring the proper use, maintenance, repair, protection, insurance and preservation of state equipment and/or miscellaneous property.
- (1) In administering this provision, CDHS may require the Contractor and/or Subcontractor to repair or replace, to CDHS' satisfaction, any damaged, lost or stolen state equipment and/or miscellaneous property. Contractor and/or Subcontractor shall immediately file a theft report with the appropriate police agency or the California Highway Patrol and Contractor shall promptly submit one copy of the theft report to the CDHS program contract manager.

- e. Unless otherwise stipulated by the program funding this agreement, equipment and/or miscellaneous property purchased/reimbursed with agreement funds or furnished by CDHS under the terms of this agreement, shall only be used for performance of this agreement or another CDHS agreement.
- f. Within sixty (60) calendar days prior to the termination or end of this agreement, the Contractor shall provide a final inventory report of equipment and/or miscellaneous property to the CDHS program contract manager and shall, at that time, query CDHS as to the requirements, including the manner and method, of returning state equipment and/or miscellaneous property to CDHS. Final disposition of equipment and/or miscellaneous property shall be at CDHS expense and according to CDHS instructions. Equipment and/or miscellaneous property disposition instructions shall be issued by CDHS immediately after receipt of the final inventory report. At the termination or conclusion of this agreement, CDHS may at its discretion, authorize the continued use of state equipment and/or miscellaneous property for performance of work under a different CDHS agreement.

g. **Motor Vehicles**

(Applicable only if motor vehicles are purchased/reimbursed with agreement funds or furnished by CDHS under this agreement.)

- (1) If motor vehicles are purchased/reimbursed with agreement funds or furnished by CDHS under the terms of this agreement, within thirty (30) calendar days prior to the termination or end of this agreement, the Contractor and/or Subcontractor shall return such vehicles to CDHS and shall deliver all necessary documents of title or registration to enable the proper transfer of a marketable title to CDHS.
- (2) If motor vehicles are purchased/reimbursed with agreement funds or furnished by CDHS under the terms of this agreement, the State of California shall be the legal owner of said motor vehicles and the Contractor shall be the registered owner. The Contractor and/or a subcontractor may only use said vehicles for performance and under the terms of this agreement.
- (3) The Contractor and/or Subcontractor agree that all operators of motor vehicles, purchased/reimbursed with agreement funds or furnished by CDHS under the terms of this agreement, shall hold a valid State of California driver's license. In the event that ten or more passengers are to be transported in any one vehicle, the operator shall also hold a State of California Class B driver's license.
- (4) If any motor vehicle is purchased/reimbursed with agreement funds or furnished by CDHS under the terms of this agreement, the Contractor and/or Subcontractor, as applicable, shall provide, maintain, and certify that, at a minimum, the following type and amount of automobile liability insurance is in effect during the term of this agreement or any period of contract extension during which any vehicle remains in the Contractor's and/or Subcontractor's possession:

Automobile Liability Insurance

- (a) The Contractor, by signing this agreement, hereby certifies that it possesses or will obtain automobile liability insurance in the amount of \$1,000,000 per occurrence for bodily injury and property damage combined. Said insurance must be obtained and made effective upon the delivery date of any motor vehicle, purchased/reimbursed with agreement funds or furnished by CDHS under the terms of this agreement, to the Contractor and/or Subcontractor.
- (b) The Contractor and/or Subcontractor shall, as soon as practical, furnish a copy of the certificate of insurance to the CDHS program contract manager.
- (c) The Contractor and/or Subcontractor agree that bodily injury and property damage liability insurance, as required herein, shall remain in effect at all times during the term of this agreement or until such time as the motor vehicle is returned to CDHS.
- (d) The Contractor and/or Subcontractor agree to provide, at least thirty (30) days prior to the expiration date of said insurance coverage, a copy of a new certificate of insurance evidencing continued coverage, as indicated herein, for not less than the remainder of the term of this agreement, the term of any extension or continuation thereof, or for a period of not less than one (1) year.

- (e) The Contractor and/or Subcontractor, if not a self-insured government and/or public entity, must provide evidence, that any required certificates of insurance contain the following provisions:
 - [1] The insurer will not cancel the insured's coverage without giving thirty (30) calendar days prior written notice to the State (California Department of Health Services).
 - [2] The State of California, its officers, agents, employees, and servants are included as additional insureds, but only with respect to work performed for the State under this agreement and any extension or continuation of this agreement.
 - [3] The insurance carrier shall notify the California Department of Health Services (CDHS), in writing, of the Contractor's failure to pay premiums; its cancellation of such policies; or any other substantial change, including, but not limited to, the status, coverage, or scope of the required insurance. Such notices shall contain a reference to the agreement number for which the insurance was obtained.
- (f) The Contractor and/or Subcontractor is hereby advised that copies of certificates of insurance may be subject to review and approval by the Department of General Services (DGS), Office of Risk and Insurance Management. The Contractor shall be notified by CDHS, in writing, if this provision is applicable to this agreement. If DGS approval of the certificate of insurance is required, the Contractor agrees that no work or services shall be performed prior to obtaining said approval.
- (g) In the event the Contractor and/or Subcontractor fails to keep insurance coverage, as required herein, in effect at all times during vehicle possession, CDHS may, in addition to any other remedies it may have, terminate this agreement upon the occurrence of such event.

19. Use of Small Business Subcontractors

(Only applicable to agreements awarded in part due to the granting of non-small business subcontractor preference where the Contractor committed to use small business subcontractors for at least 25% of the initial contract cost or amount bid.)

- a. All Non-Small Business Subcontractor Preference Request attachments and Small Business Subcontractor/Supplier Acknowledgment attachments, however labeled, completed as a condition of bidding, are incorporated herein, and made a part of this agreement by this reference.
- b. Contractor agrees to use each small business subcontractor/supplier, as identified in previously submitted Non-Small Business Subcontractor Preference Request attachments, unless the Contractor submits a written request for substitution of a like or alternate subcontractor. All requests for substitution must be approved by CDHS, in writing (including email or fax), prior to using a proposed substitute subcontractor.
- c. Requests for substitution must be approved by the funding program and must include, at a minimum:
 - (1) An explanation of the reason for the substitution.
 - (2) A written description of the business enterprise that will be substituted, including its small business certification status.
 - (3) If substitution of an alternate small business does not occur, include a written justification and description of the steps taken to try to acquire a new small business and how that portion of the contract will be fulfilled.
 - (4) A written description of the work to be performed by the substituted subcontractor identified by both task (if applicable) and dollar amount or percentage of the overall contract that the substituted subcontractor will perform. The substituted business, if approved, must perform a commercially useful function in the contract pursuant to Title 2, California Code of Regulations §1896.6.
- d. CDHS may consent to the substitution in any of the situations set forth in Public Contract Code Section 4107 of the Subletting and Subcontracting Fair Practices Act.

- e. Prior to the approval of the prime contractor's request for the substitution, the funding program shall give notice in writing to the listed subcontractor of the prime contractor's request to substitute and the reasons for the request to substitute. The notice shall be served by certified or registered mail to the last known address of the subcontractor. The listed subcontractor that has been so notified shall have five (5) working days after the receipt of the notice to submit written objections to the substitution to the funding program. Failure to file these written objections shall constitute the listed subcontractor's consent to the substitution. If written objections are filed, CDHS shall give notice in writing of at least five (5) working days to the listed subcontractor of a hearing by CDHS on the prime contractor's request for substitution.
- f. Failure of the contractor to subcontract with the small businesses listed in its bid or proposal to CDHS, or failure to follow applicable substitution rules and regulations may be grounds for the Department of General Services to impose sanctions pursuant to Government Code Section 14842.5 and Title 2, California Code of Regulations § 1896.16. In the event such sanction are to be imposed, the Contractor shall be notified in writing and entitled to a hearing pursuant to Title 2, California Code of Regulations §1896.18 and §1896.20.
- g. If requested by CDHS, Contractor agrees to provide documentation/verification, in a form agreed to by CDHS, that small business subcontractor usage under this agreement complies with the commitments specified during the contractor selection process.

Exhibit E Additional Provisions

Additional Incorporated Exhibits

The following documents and any subsequent updates are not attached, but are incorporated herein and made a part hereof by this reference. These documents may be updated periodically by CDHS, as required by program directives. CDHS shall provide the Contractor with copies of said documents and any periodic updates thereto, under separate cover. Contractor will maintain on file, all documents referenced herein and any subsequent updates.

- A. The budget justification supporting the line item budget.
- B. The Tobacco Control Section's Competitive Grantees Administrative and Policy Manual.

2. Contract Amendments

Should either party, during the term of this agreement, desire a change or amendment to the terms of this Agreement, such changes or amendments shall be proposed in writing to the other party, who will respond in writing as to whether the proposed changes/amendments are accepted or rejected. If accepted and after negotiations are concluded, the agreed upon changes shall be made through the State's official agreement amendment process. No amendment will be considered binding on either party until it is formerly approved by both parties and the Department of General Services, if such approval is required.

3. Cancellation/Termination

- A. This agreement may be cancelled or terminated without cause by either party by giving thirty (30) calendar days advance written notice to the other party. Such notification shall state the effective date of termination or cancellation and include any final performance and/or payment/invoicing instructions/requirements.
- B. Upon receipt of a notice of termination or cancellation from CDHS, Contractor shall take immediate steps to stop performance and to cancel or reduce subsequent contract costs.
- C. Contractor shall be entitled to payment for all allowable costs authorized under this agreement, including authorized non-cancelable obligations incurred up to the date of termination or cancellation, provided such expenses do not exceed the stated maximum amounts payable.

4. Dispute Resolution Process

Exhibit E Additional Provisions

If a dispute arises between the Contractor and CDHS, the Contractor must seek resolution using the process outlined below.

- A. The Contractor should first informally discuss the problem with the CDHS program contract manager. If the problem cannot be resolved informally, the Contractor must direct the grievance together with any evidence, in writing, to the program Branch Chief. The grievance must state the issues in dispute, the legal authority or other basis for the Contractor's position and the remedy sought. The Branch Chief must render a decision within ten (10) working days after receipt of the written grievance from the Contractor. The Branch Chief shall respond in writing to the Contractor indicating the decision and reasons therefore. Should the Contractor disagree with the Branch Chief's decision, the Contractor may appeal to the second level.
- B. When appealing to the second level the Contractor must prepare an appeal indicating the reasons for disagreement with the Branch Chief's decision. The Contractor shall include with the appeal a copy of the Contractor's original statement of dispute along with any supporting evidence and a copy of the Branch Chief's decision. The appeal shall be addressed to the Deputy Director of the division in which the branch is organized within ten (10) working days from receipt of the Branch Chief's decision. The Deputy Director of the division in which the branch is organized or his/her designee shall meet with the Contractor to review the issues raised. A written decision signed by the Deputy Director of the division in which the branch is organized or his/her designee shall be directed to the Contractor within twenty (20) working days of receipt of the Contractor's second level appeal. The decision rendered by the Deputy Director or his/her designee shall be the final administrative determination of the Department.
- C. Unless otherwise stipulated in writing by CDHS, all dispute, grievance and/or appeal correspondence shall be directed to the CDHS program contract manager.
- D. There are organizational differences within CDHS' funding programs and the management levels identified in this dispute resolution provision may not apply in every contractual situation. When a grievance is received and organizational differences exist, the Contractor shall be notified in writing by the CDHS program contract manager of the level, name, and/or title of the appropriate management official that is responsible for issuing a decision at a given level.

5. Mutual Indemnification

- A. CDHS and the Contractor shall mutually defend, indemnify and hold each other and their respective agencies, officers, employees and agents harmless from and against any and all liability, loss, expense, attorneys' fees, or claims for injury or damages arising out of the performance of this agreement but only in proportion to and to the extent such liability, loss, expense, attorneys' fees, or claims for injury or damages are caused by or

Exhibit E
Additional Provisions

result from the negligent or intentional acts or omissions of either CDHS or the Contractor.

- B. It should be expressly understood that the obligations hereunder shall be conditioned upon this agreement being one that falls within the purview of Section 895 of the Government Code.

6. Confidentiality of Information

- A. The Contractor and its employees, agents, or subcontractors shall protect from unauthorized disclosure names and other identifying information concerning persons either receiving services pursuant to this agreement or persons whose names or identifying information become available or are disclosed to the Contractor, his/her employees, agents, or subcontractors as a result of services performed under this agreement, except for statistical information not identifying any such person.
- B. The Contractor and its employees, agents, or subcontractors shall not use such identifying information for any purpose other than carrying out the Contractor's obligations under this agreement.
- C. The Contractor and its employees, agents, or subcontractors shall promptly transmit to the CDHS program contract manager all requests for disclosure of such identifying information not emanating from the client or person.
- D. The Contractor shall not disclose, except as otherwise specifically permitted by this agreement or authorized by the client, any such identifying information to anyone other than CDHS without prior written authorization from the CDHS program contract manager, except if disclosure is required by State or Federal law.
- E. For purposes of this provision, identity shall include, but not be limited to name, identifying number, symbol, or other identifying particular assigned to the individual, such as finger or voice print or a photograph.

Exhibit E
Additional Provisions

7. Avoidance of Conflicts of Interest by Contractor

- A. The California of Health Services (CDHS) intends to avoid any real or apparent conflict of interest on the part of the Contractor, subcontractors, or employees, officers and directors of the Contractor or subcontractors. Thus, CDHS reserves the right to determine, at its sole discretion, whether any information, assertion or claim received from any source indicates the existence of a real or apparent conflict of interest under this agreement; and if a conflict is found to exist, to require the Contractor to submit additional information or a plan for resolving the conflict, subject to CDHS review and prior approval.
- B. Conflicts of interest include, but are not limited to:
 - 1) An instance where the Contractor or any of its subcontractors, or any employee, officer, or director of the Contractor or any subcontractor has an interest, financial or otherwise, whereby the use or disclosure of information obtained while performing services under this agreement would allow for private or personal benefit or for any purpose that is contrary to the goals and objectives of this agreement.
 - 2) An instance where the Contractor's or any subcontractor's employees, officers, or directors use their positions for purposes that are, or give the appearance of being, motivated by a desire for private gain for themselves or others, such as those with whom they have family, business or other ties.
- C. If CDHS is or becomes aware of a known or suspected conflict of interest, the Contractor will be given an opportunity to submit additional information or to resolve the conflict. A Contractor with a suspected conflict of interest under this agreement will have five (5) working days from the date of notification of the conflict by CDHS to provide complete information regarding the suspected conflict. If a conflict of interest under this agreement is determined to exist by CDHS and cannot be resolved to the satisfaction of CDHS, the conflict will be grounds for terminating this agreement. CDHS may, at its discretion upon receipt of a written request from the Contractor, authorize an extension of the timeline indicated herein.

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Additional Provisions

8. Site Inspection

The State, through any authorized representatives, has the right at all reasonable times to inspect or otherwise evaluate the work performed or being performed hereunder including subcontract supported activities and the premises in which it is being performed. If any inspection or evaluation is made of the premises of the Contractor or Subcontractor, the Contractor shall provide and shall require Subcontractors to provide all reasonable facilities and assistance for the safety and convenience of the authorized representatives in the performance of their duties. All inspections and evaluations shall be performed in such a manner as will not unduly delay the work.

9. Lobbying and Political Activities

- A. The Contractor shall not use agreement funds for direct or indirect lobbying.
 - 1) Direct lobbying, for the purposes of this agreement is defined as any explicit attempt to promote a yes or no vote on a specific piece of legislation, local ordinance or ballot measure through any oral, written or other form of communication with any member or employee of a legislative body, or any government official or employee who participates in the formulation of, or decision-making regarding that specific piece of legislation, local ordinance or ballot measure.
 - 2) Indirect lobbying, for the purposes of this agreement, is defined as any oral or written communication to the general public or any segment of the general population which explicitly attempts to promote a yes or no vote on a specific piece of legislation, local ordinance or ballot measure by encouraging the recipients of the communication to attempt to influence a legislator or an employee of a legislative body or any other government official or employee who participates in the formulation of, or decision-making regarding that legislation, local ordinance or ballot measure.
- B. The Contractor shall not use agreement funds to promote a yes or no vote on a ballot measure.
- C. The Contractor shall not use agreement funds to promote, directly or indirectly, any candidate for an elective public office.

Exhibit H Copyright / Ownership / Use of Data

Ownership of Intellectual Property and Materials

1. Ownership

The State, through this conveyance, shall be the owner of all rights, title and interest in, but not limited to, the copyright to all [Works](#), as defined below, whether or not published and transferred. The State owns the copyright to any and all Works under this Agreement from the moment of creation. If, for any reason, the State is not deemed to be the owner of all rights, title and interest in the Work, then Contractor assigns through this agreement those rights to the State.

2. Definitions

- A. "Copyright" is defined as protection for original works of authorship fixed in any tangible medium of expression, now known or later developed, from which those works can be perceived, reproduced, or otherwise communicated, either directly or with the aid of a machine or device.
- B. "Work" is defined as any materials or products, as set forth in 17 U.S.C. 100 et seq. and related regulations and case law, created, produced, conceptualized and fixed in a tangible medium of expression, developed, or delivered, and paid for under this Agreement (whether or not copyrighted). It includes preliminary and final products and any materials and information developed for producing those final products. Work does not include independent research projects as defined in [Conditions Applicable to Independent Research](#).

3. License to State

For any product or material, except for data that is publicly available without restriction that is collected, created and fixed in a tangible medium of expression, produced, developed, or delivered and paid for under this contract that is not deemed a Work(s), the Contractor grants through this agreement to the State a royalty-free, non-exclusive, and irrevocable license throughout the world to reproduce, to prepare derivative works, to distribute copies, to perform, to display or otherwise use, duplicate or dispose of such Work in any manner for governmental purposes and to have or permit others to do so.

4. License Obligations of Contractor

The Contractor must indicate in the [Scope of Work](#) that the use of licensed products, including software products, are commercially available, can be purchased by the State, and can be performed on existing State equipment. Except as provided in the **Scope of Work**, the Contractor shall not use licensed materials without prior written permission of the State.

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Copyright / Ownership / Use of Data

For Works that require the use of other copyright holders' materials, the Contractor shall furnish the names and addresses of all copyright holder(s) or their agent(s), if any, and the terms of any license(s) or usage granted, at the time of delivery of the Works.

Contractor shall obtain for the State a royalty-free, non exclusive and irrevocable license throughout the world to reproduce, to prepare derivative Works, to distribute copies, to perform, to display or otherwise use, duplicate or dispose of these Works in any matter for government purposes and to have or permit others to do so for those Works for which the copyright is not assigned to the State or for which the Contractor failed to obtain copyright for the State, at Contractor's expense, Contractor may replace an infringing element with a comparable element that is non-infringing or does not violate the rights or interest of any person or entity with the State's written permission.

5. Subcontractors

Contractor shall require any agreements with other parties who will perform all or part of the Scope of Work under this Agreement to include clauses granting the State a copyright interest in any Work. Contractor shall require the other parties to assign those rights to the State on a form to be provided by the State.

6. Notice

Contractor shall include a notice of copyright supplied by the State in a place that can be visually perceived either directly or with the aid of a machine or device on all Work distributed under the terms of this Agreement and any reproductions of visual Works or text of these Works.

7. Noninterference of Rights of State

Contractor agrees that it has not knowingly granted and it shall not knowingly grant to any person or entity any right that would diminish, encumber or interfere with any of the rights granted to the State in this Agreement.

8. Remedies after Completion

If, after the completion and acceptance of the Work, the State becomes aware that the Work cannot be used because it would infringe upon the copyright, literary, dramatic, statutory, or common law rights, trademarks, or service marks of any third party, would infringe upon or violate the rights or interests of, or the rights of privacy of, a third party or would constitute libel or slander against a third party: as determined by the State, the Contractor shall provide the following remedies in consultation with the State and approval by the State.

- A. Procure for the State a license as set forth in Article I, Paragraph 4. [License Obligations of Contractor](#), above, to use that element of the Work, if available at a reasonable expense, or

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- B. Replace that element with the comparable element that is noninfringing or does not violate the rights or interest of any person or entity, or
- C. Modify that element so it becomes noninfringing or does not violate the rights or interest of any person or entity, or
- D. Remove any element that constitutes a libel or slander of any person or entity.

Contractor makes no representations that it will maintain the capability to provide the remedies set forth in (a) through (d) above if the capability is dependent on maintaining the original computer software or hardware used to develop the element.

9. Materials

The State shall retain ownership of the original and all copies of the Work and the medium such as original artwork and negatives, print ready art or copy, computer diskettes, etc. Contractor shall make delivery of the original and copies within ninety (90) working days of request by the State or at termination, or expiration, of this Agreement or at the end of the fiscal year. Contractor may retain copies of the Work on file for audit purposes and for purposes identified in [License and Derivative Works](#), of this Agreement.

II. License and Derivative Works

The State grants the Contractor a royalty-free, non-exclusive license to use, reproduce and disseminate a Work approved as satisfactory by the State and permission to create derivatives works and use, that Work in independent research projects, subject to the limitations [Conditions Applicable to Independent Research](#), for noncommercial research and educational purposes.

III. Rights in Data

Notwithstanding any other provision of the Agreement or its Exhibits, Contractor understands and agrees that [Ownership of Intellectual Property and Materials](#) governs all ownership rights in data files, databases, or database systems.

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Copyright / Ownership / Use of Data

IV. Conditions Applicable to Reports/Publications Deliverable to the State

1. The Contractor shall use data that is contained in all deliverable published reports or publications and provided by the State or collected or prepared under the Agreement by Contractor, except as provided in Conditions Applicable to Independent Research, under the following conditions:
 - A. All data/research reports or publications shall contain (1) a disclaimer that credits any analysis, interpretations, or conclusions reached to the author(s) and not to the State, and (2) a statement on the biases in the data known to affect the report findings.
 - B. The Contractor shall submit all deliverable public reports or publications to the State's Contract Manager for review, written comment and approval by the State, subject to requirements in Satisfactory Deliverables, at least ninety (90) calendar days before release of the deliverable public report or submission for publication or reproduction. The Contractor shall incorporate all of the comments of the State's Contract Manager insofar as possible, and the Contract Manager shall be informed of any comments which cannot be incorporated and why, so that any differences can be discussed before publication. The State review may make a determination that the technical descriptions of the data are consistent with those provided by the State and that all confidential information has been deleted or scrambled. Contractor shall delete or scramble all confidential information as required by the State. No deliverable public report or publication shall be published unless it has been approved by the State.
 - C. Contractor agrees to deliver, in a form that can be used and reproduced by the State, any Works as defined in Ownership of Intellectual Property and Materials, developed in execution of this Agreement at completion of this Agreement. The Contractor shall deliver those copies to the State within ninety (90) calendar days of the completion of this Agreement.
 - D. The State shall have the right to order, at any time during the performance of this Agreement, or within three years from either acceptance of all items (other than data) to be delivered under this Agreement or termination of this Agreement, whichever is later, any Work and any data not called for in this Agreement but generated in performance of this Agreement. The Contractor shall promptly prepare and deliver that data as is ordered for actual costs of reproduction, including no more than 10% overhead. The Contractor shall exercise its best efforts to prepare and deliver such data as is ordered if the principal investigator is no longer associated with the Contractor. The Contractor shall be relieved of obligation to furnish data pertaining to an item

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obtained from a subcontractor upon the expiration of three years from the date the Contractor accepts such items.

When data, other than the Work as defined in Article I, Paragraph 2, [Ownership of Intellectual Property and Materials](#) is delivered pursuant to this section, payment shall be made, by equitable adjustment or otherwise, for converting the data into the prescribed form, reproducing it, or preparing it for delivery.

- E. Contractor must request in writing and obtain written permission from the State to release to other parties data files, databases, or database systems except for those that are publicly available without restriction, provided by the State or prepared or collected under this Agreement within thirty (30) calendar days before the release of the data files, databases, or database systems.

V. Conditions Applicable to Independent Research

1. "Independent research project" is defined as research, articles, reports, and materials that is not necessary for performance of this Agreement, produced by Contractor and Contractor's faculty, students, or staff using data provided by the State or collected or prepared under this Agreement. Independent research projects shall not have been produced in performance of this Agreement, nor during time invoiced to the Department, nor paid for, under this Agreement.
2. Contractor shall request prior written permission from the State to use confidential information in data from State databases or collected or prepared under this Agreement according to the requirements of the source database or the appropriate human subject review board. "Confidential information" means any information containing patient identifiers, including but not limited to, name, address, telephone number, social security number, medical identification number, and drivers license number.
3. The Contractor shall include in all data/research reports or publications (a) a disclaimer that credits any analysis, interpretations, or conclusions reached to the author(s) and not to the State, and (b) a statement on the biases in the data known to affect the report findings. Independent research projects shall not contain the publication credit in [Publication Credit](#).
4. Contractor shall supply the State with a copy of the final product three (3) weeks prior to the date of submission for publication, and a copy of the final publication for independent research project articles, reports or materials intended for publication. The State shall not release the articles, reports or materials or comment publicly prior to their scheduled release.
5. Contractor must request in writing and obtain written permission from the State to release to other parties data files, databases, or database systems except for those that are publicly available without restriction, provided by the State, or

Exhibit H

Copyright / Ownership / Use of Data

prepared or collected under this Agreement within thirty (30) calendar days before the release of the data files, databases, or database systems. Contractor can use and release individual data elements without prior approval from the State.

VI. Publication Credit

The Contractor shall include a statement giving credit for support by the State on the title page of deliverable public reports or publications regarding any work performed with funds provided under this Agreement, such as:

" This project was supported by funds received from the State of California, California Department of Health Services, in Interagency Agreement 06-55328." In addition to the requirements [Conditions Applicable to Reports/Publications Deliverable to the State](#), the Contractor must also include this statement on any curriculum, educational materials, programs, program documentation, videotapes, and/or other audio-visual materials (Works) resulting from this Agreement.

VII. Satisfactory Deliverables

Contractors must provide the State with deliverables that are of the highest quality, including the use of highest quality concepts developed under this Agreement. If satisfactory deliverables are not received, the State shall not approve for payment subsequent invoices under the terms of the Agreement until the State receives satisfactory deliverables. Deliverables must not contain confidential information in violation of state or federal law or the requirements of the appropriate human subjects review boards. "Confidential information" means any information containing patient identifiers, including but not limited to: name, address, telephone number, social security number, medical identification number, driver's license number.

Exhibit G
HIPAA Business Associate Addendum

I. Recitals – HIGH RISK

- A. This Contract (Agreement) has been determined to constitute a business associate relationship under the Health Insurance Portability and Accountability Act (“HIPAA”) and its implementing privacy and security regulations at 45 CFR Parts 160 and 164 (“the HIPAA regulations.”).
- B. The Department of Health Services (“DHS”) wishes to disclose to Business Associate certain information pursuant to the terms of this Agreement, some of which may constitute Protected Health Information (“PHI”).
- C. “Protected Health Information” or “PHI” means any information, whether oral or recorded in any form or medium that relates to the past, present, or future physical or mental condition of an individual, the provision of health and dental care to an individual, or the past, present, or future payment for the provision of health and dental care to an individual; and that identifies the individual or with respect to which there is a reasonable basis to believe the information can be used to identify the individual. PHI shall have the meaning given to such term under HIPAA and HIPAA regulations, as the same may be amended from time to time.
- D. “Security Incident” means the attempted or successful unauthorized access, use, disclosure, modification, or destruction of PHI, or confidential data that is essential to the ongoing operation of the Business Associate's organization and intended for internal use; or interference with system operations in an information system.
- E. As set forth in this Agreement Contractor, here and after, is the Business Associate of DHS that provides services, arranges, performs or assists in the performance of functions or activities on behalf of DHS and creates, receives, maintains, transmits, uses or discloses PHI.
- F. DHS and Business Associate desire to protect the privacy and provide for the security of PHI created, received, maintained, transmitted, used or disclosed pursuant to this Agreement, in compliance with HIPAA and HIPAA regulations and other applicable laws.
- G. The purpose of the Addendum is to satisfy certain standards and requirements of HIPAA and the HIPAA regulations.
- H. The terms used in this Addendum, but not otherwise defined, shall have the same meanings as those terms in the HIPAA regulations.

In exchanging information pursuant to this Agreement, the parties agree as follows:

1. Permitted Uses and Disclosures of PHI by Business Associate

- A. ***Permitted Uses and Disclosures.*** Except as otherwise indicated in this Addendum, Business Associate may use or disclose PHI only to perform functions, activities or services specified in this Agreement, for, or on behalf of DHS, provided that such use or disclosure would not violate the HIPAA regulations, if done by DHS.
- B. ***Specific Use and Disclosure Provisions.*** Except as otherwise indicated in this Addendum, Business Associate may:
 - 1) ***Use and disclose for management and administration.*** Use and disclose PHI for the proper management and administration of the Business Associate or to carry out the legal responsibilities of the Business Associate, provided that disclosures are required by law, or the Business Associate obtains reasonable assurances from the person to whom the information is disclosed that it will remain confidential and will be used or further disclosed only as required by law or for the purpose

Exhibit G
HIPAA Business Associate Addendum

for which it was disclosed to the person, and the person notifies the Business Associate of any instances of which it is aware that the confidentiality of the information has been breached.

- 2) **Provision of Data Aggregation Services.** Use PHI to provide data aggregation services to DHS. Data aggregation means the combining of PHI created or received by the Business Associate on behalf of DHS with PHI received by the Business Associate in its capacity as the Business Associate of another covered entity, to permit data analyses that relate to the health care operations of DHS.

2. Responsibilities of Business Associate

Business Associate agrees:

- A. **Nondisclosure.** Not to use or disclose Protected Health Information (PHI) other than as permitted or required by this Agreement or as required by law.
- B. **Safeguards.** To implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of the PHI, including electronic PHI, that it creates, receives, maintains, uses or transmits on behalf of DHS; and to prevent use or disclosure of PHI other than as provided for by this Agreement. Business Associate shall develop and maintain a written information privacy and security program that includes administrative, technical and physical safeguards appropriate to the size and complexity of the Business Associate's operations and the nature and scope of its activities, and which incorporates the requirements of section C, Security, below. Business Associate will provide DHS with its current and updated policies.
- C. **Security.** To take any and all steps necessary to ensure the continuous security of all computerized data systems containing PHI, and provide data security procedures for the use of DHS at the end of the contract period. These steps shall include, at a minimum:
- 1) Complying with all of the data system security precautions listed in this Agreement or in an Exhibit attached to this Agreement;
 - 2) Achieving and maintaining compliance with the HIPAA Security Rule (45 CFR Parts 160 and 164), as necessary in conducting operations on behalf of DHS under this Agreement;
 - 3) Providing a level and scope of security that is at least comparable to the level and scope of security established by the Office of Management and Budget in OMB Circular No. A-130, Appendix III- Security of Federal Automated Information Systems, which sets forth guidelines for automated information systems in Federal agencies; and
 - 4) Complying with the safeguard provisions in the Department's Information Security Policy, embodied in Health Administrative Manual (HAM), sections 6-1000 et seq. and in the Security and Risk Management Policy in the Information Technology Section of the State Administrative Manual (SAM), sections 4840 et seq., in so far as the security standards in these manuals apply to Business Associate's operations. In case of a conflict between any of the security standards contained in any of these four enumerated sources of security standards, the most stringent shall apply. The most stringent means that safeguard which provides the highest level of protection to PHI from unauthorized disclosure. Further, Business Associate must comply with changes to these standards that occur after the effective date of this Agreement.

Business Associate shall designate a Security Officer to oversee its data security program who shall be responsible for carrying out the requirements of this section and for communicating on security matters with DHS.

- D. **Mitigation of Harmful Effects.** To mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a use or disclosure of PHI by Business Associate or its subcontractors in violation of the requirements of this Addendum.

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HIPAA Business Associate Addendum

- E. **Business Associate's Agents.** To ensure that any agents, including subcontractors, to whom Business Associate provides PHI received from or created or received by Business Associate on behalf of DHS, agree to the same restrictions and conditions that apply to Business Associate with respect to such PHI, including implementation of reasonable and appropriate administrative, physical, and technical safeguards to protect such PHI; and to incorporate, when applicable, the relevant provisions of this Addendum into each subcontract or subaward to such agents or subcontractors.
- F. **Availability of Information to DHS and Individuals.** To provide access as DHS may require, and in the time and manner designated by DHS (upon reasonable notice and during Business Associate's normal business hours) to PHI in a Designated Record Set, to DHS (or, as directed by DHS), to an Individual, in accordance with 45 CFR Section 164.524. Designated Record Set means the group of records maintained for DHS that includes medical, dental and billing records about individuals; enrollment, payment, claims adjudication, and case or medical management systems maintained for DHS health plans; or those records used to make decisions about individuals on behalf of DHS. Business Associate shall use the forms and processes developed by DHS for this purpose and shall respond to requests for access to records transmitted by DHS within fifteen (15) calendar days of receipt of the request by producing the records or verifying that there are none.
- G. **Amendment of PHI.** To make any amendment(s) to PHI that DHS directs or agrees to pursuant to 45 CFR Section 164.526, in the time and manner designated by DHS.
- H. **Internal Practices.** To make Business Associate's internal practices, books and records relating to the use and disclosure of PHI received from DHS, or created or received by Business Associate on behalf of DHS, available to DHS or to the Secretary of the U.S. Department of Health and Human Services in a time and manner designated by DHS or by the Secretary, for purposes of determining DHS's compliance with the HIPAA regulations.
- I. **Documentation of Disclosures.** To document and make available to DHS or (at the direction of DHS) to an Individual such disclosures of PHI, and information related to such disclosures, necessary to respond to a proper request by the subject Individual for an accounting of disclosures of PHI, in accordance with 45 CFR 164.528.
- J. **Notification of Breach.** During the term of this Agreement:
- 1) **Discovery of Breach.** To notify DHS **immediately by telephone call plus e-mail or fax** upon the discovery of breach of security of PHI in computerized form if the PHI was, or is reasonably believed to have been, acquired by an unauthorized person; or **within 24 hours by e-mail or fax** of any suspected security incident, intrusion or unauthorized use or disclosure of PHI in violation of this Agreement and this Addendum, or potential loss of confidential data affecting this Agreement. Notification shall be provided to the DHS contract manager, the DHS Privacy Officer and the DHS Information Security Officer. If the incident occurs after business hours or on a weekend or holiday and involves electronic PHI, notification shall be provided by calling the DHS ITSD Help Desk. Business Associate shall take:
 - i. Prompt corrective action to mitigate any risks or damages involved with the breach and to protect the operating environment and
 - ii. Any action pertaining to such unauthorized disclosure required by applicable Federal and State laws and regulations.
 - 2) **Investigation of Breach.** To immediately investigate such security incident, breach, or unauthorized use or disclosure of PHI or confidential data. Within 72 hours of the discovery, to notify the DHS contract manager, the DHS Privacy Officer, and the DHS Information Security Officer of:
 - i. What data elements were involved and the extent of the data involved in the breach,

Exhibit G
HIPAA Business Associate Addendum

- ii. A description of the unauthorized persons known or reasonably believed to have improperly used or disclosed PHI or confidential data,
 - iii. A description of where the PHI or confidential data is believed to have been improperly transmitted, sent, or utilized,
 - iv. A description of the probable causes of the improper use or disclosure; and
 - v. Whether Civil Code sections 1798.29 or 1798.82 or any other federal or state laws requiring individual notifications of breaches are triggered.
- 3) **Written Report.** To provide a written report of the investigation to the DHS contract manager, the DHS Privacy Officer, and the DHS Information Security Officer within ten (10) working days of the discovery of the breach or unauthorized use or disclosure. The report shall include, but not be limited to, the information specified above, as well as a full, detailed corrective action plan, including information on measures that were taken to halt and/or contain the improper use or disclosure.
- 4) **Notification of Individuals.** To notify individuals of the breach or unauthorized use or disclosure when required under state or federal law and to pay any costs of such notifications, as well as any costs associated with the breach. The DHS contract manager, the DHS Privacy Officer, and the DHS Information Security Officer shall approve the time, manner and content of any such notifications.
- 5) **DHS Contact Information.** To direct communications to the above referenced DHS staff, the Contractor shall initiate contact as indicated herein. DHS reserves the right to make changes to the contact information below by giving written notice to the Contractor. Said changes shall not require an amendment to this Agreement or Addendum.

DHS Contract Manager	DHS Privacy Officer	DHS Information Security Officer
See Provision 4 of Exhibit A for Contract Manager information	Privacy Officer c/o: Office of Legal Services California Department of Health Services P.O. Box 997413, MS 0011 Sacramento, CA 95899-7413 Telephone: (916) 440-7750 Email: privacyofficer@dhs.ca.gov	Information Security Officer Information Security Office P.O. Box 997413, MS 6302 Sacramento, CA 95899-7413 Email: dhsiso@dhs.ca.gov Telephone: ITSD Help Desk 916-440-7000 or 800-579-0874

- K. **Employee Training and Discipline.** To train and use reasonable measures to ensure compliance with the requirements of this Addendum by employees who assist in the performance of functions or activities on behalf of DHS under this Agreement and use or disclose PHI; and discipline such employees who intentionally violate any provisions of this Addendum, including by termination of employment.

3. Obligations of DHS

DHS agrees to:

Exhibit G**HIPAA Business Associate Addendum**

- A. **Notice of Privacy Practices.** Provide Business Associate with the Notice of Privacy Practices that DHS produces in accordance with 45 CFR 164.520, as well as any changes to such notice. Visit this Internet address to view the most current Notice of Privacy Practices: <http://www.dhs.ca.gov/hipaa>.
- B. **Permission by Individuals for Use and Disclosure of PHI.** Provide the Business Associate with any changes in, or revocation of, permission by an Individual to use or disclose PHI, if such changes affect the Business Associate's permitted or required uses and disclosures.
- C. **Notification of Restrictions.** Notify the Business Associate of any restriction to the use or disclosure of PHI that DHS has agreed to in accordance with 45 CFR 164.522, to the extent that such restriction may affect the Business Associate's use or disclosure of PHI.
- D. **Requests Conflicting with HIPAA Rules.** Not request the Business Associate to use or disclose PHI in any manner that would not be permissible under the HIPAA regulations if done by DHS.

4. Audits, Inspection and Enforcement

From time to time, DHS may inspect the facilities, systems, books and records of Business Associate to monitor compliance with this Agreement and this Addendum. Business Associate shall promptly remedy any violation of any provision of this Addendum and shall certify the same to the DHS Privacy Officer in writing. The fact that DHS inspects, or fails to inspect, or has the right to inspect, Business Associate's facilities, systems and procedures does not relieve Business Associate of its responsibility to comply with this Addendum, nor does DHS's:

- A. Failure to detect or
- B. Detection, but failure to notify Business Associate or require Business Associate's remediation of any unsatisfactory practices constitute acceptance of such practice or a waiver of DHS's enforcement rights under this Agreement and this Addendum.

5. Termination

- A. **Termination for Cause.** Upon DHS's knowledge of a material breach of this Addendum by Business Associate, DHS shall:
 - 1) Provide an opportunity for Business Associate to cure the breach or end the violation and terminate this Agreement if Business Associate does not cure the breach or end the violation within the time specified by DHS;
 - 2) Immediately terminate this Agreement if Business Associate has breached a material term of this Addendum and cure is not possible; or
 - 3) If neither cure nor termination is feasible, report the violation to the Secretary of the U.S. Department of Health and Human Services.
- B. **Judicial or Administrative Proceedings.** Business Associate will notify DHS if it is named as a defendant in a criminal proceeding for a violation of HIPAA. DHS may terminate this Agreement if Business Associate is found guilty of a criminal violation of HIPAA. DHS may terminate this Agreement if a finding or stipulation that the Business Associate has violated any standard or requirement of HIPAA, or other security or privacy laws is made in any administrative or civil proceeding in which the Business Associate is a party or has been joined.
- C. **Effect of Termination.** Upon termination or expiration of this Agreement for any reason, Business Associate shall return or destroy all PHI received from DHS (or created or received by Business Associate on behalf of DHS) that Business Associate still maintains in any form, and shall retain no copies of such PHI or, if return or destruction is not feasible, shall continue to extend the protections of

Exhibit G
HIPAA Business Associate Addendum

this Addendum to such information, and shall limit further use of such PHI to those purposes that make the return or destruction of such PHI infeasible. This provision shall apply to PHI that is in the possession of subcontractors or agents of Business Associate.

6. Miscellaneous Provisions

- A. **Disclaimer.** DHS makes no warranty or representation that compliance by Business Associate with this Addendum, HIPAA or the HIPAA regulations will be adequate or satisfactory for Business Associate's own purposes or that any information in Business Associate's possession or control, or transmitted or received by Business Associate, is or will be secure from unauthorized use or disclosure. Business Associate is solely responsible for all decisions made by Business Associate regarding the safeguarding of PHI.
- B. **Amendment.** The parties acknowledge that federal and state laws relating to electronic data security and privacy are rapidly evolving and that amendment of this Addendum may be required to provide for procedures to ensure compliance with such developments. The parties specifically agree to take such action as is necessary to implement the standards and requirements of HIPAA, the HIPAA regulations and other applicable laws relating to the security or privacy of PHI. Upon DHS's request, Business Associate agrees to promptly enter into negotiations with DHS concerning an amendment to this Addendum embodying written assurances consistent with the standards and requirements of HIPAA, the HIPAA regulations or other applicable laws. DHS may terminate this Agreement upon thirty (30) days written notice in the event:
- 1) Business Associate does not promptly enter into negotiations to amend this Addendum when requested by DHS pursuant to this Section or
 - 2) Business Associate does not enter into an amendment providing assurances regarding the safeguarding of PHI that DHS in its sole discretion, deems sufficient to satisfy the standards and requirements of HIPAA and the HIPAA regulations.
- C. **Assistance in Litigation or Administrative Proceedings.** Business Associate shall make itself and any subcontractors, employees or agents assisting Business Associate in the performance of its obligations under this Agreement, available to DHS at no cost to DHS to testify as witnesses, or otherwise, in the event of litigation or administrative proceedings being commenced against DHS, its directors, officers or employees based upon claimed violation of HIPAA, the HIPAA regulations or other laws relating to security and privacy, which involves inactions or actions by the Business Associate, except where Business Associate or its subcontractor, employee or agent is a named adverse party.
- D. **No Third-Party Beneficiaries.** Nothing express or implied in the terms and conditions of this Addendum is intended to confer, nor shall anything herein confer, upon any person other than DHS or Business Associate and their respective successors or assignees, any rights, remedies, obligations or liabilities whatsoever.
- E. **Interpretation.** The terms and conditions in this Addendum shall be interpreted as broadly as necessary to implement and comply with HIPAA, the HIPAA regulations and applicable state laws. The parties agree that any ambiguity in the terms and conditions of this Addendum shall be resolved in favor of a meaning that complies and is consistent with HIPAA and the HIPAA regulations.
- F. **Regulatory References.** A reference in the terms and conditions of this Addendum to a section in the HIPAA regulations means the section as in effect or as amended.
- G. **Survival.** The respective rights and obligations of Business Associate under Section 6.C of this Addendum shall survive the termination or expiration of this Agreement.

Exhibit G

HIPAA Business Associate Addendum

- H. ***No Waiver of Obligations.*** No change, waiver or discharge of any liability or obligation hereunder on any one or more occasions shall be deemed a waiver of performance of any continuing or other obligation, or shall prohibit enforcement of any obligation, on any other occasion.

Contractor's Release

Instructions to Contractor:

With final invoice(s) submit one (1) original and one (1) copy. The original must bear the original signature of a person authorized to bind the Contractor. The additional copy may bear photocopied signatures.

Submission of Final Invoice

Pursuant to **contract number** _____ entered into between the State of California Department of Health Services (CDHS) and the Contractor (identified below), the Contractor does acknowledge that final payment has been requested via **invoice number(s)** _____, in the **amount(s) of \$** _____ and **dated** _____.
If necessary, enter "See Attached" in the appropriate blocks and attach a list of invoice numbers, dollar amounts and invoice dates.

Release of all Obligations

By signing this form, and upon receipt of the amount specified in the invoice number(s) referenced above, the Contractor does hereby release and discharge the State, its officers, agents and employees of and from any and all liabilities, obligations, claims, and demands whatsoever arising from the above referenced contract.

Repayments Due to Audit Exceptions / Record Retention

By signing this form, Contractor acknowledges that expenses authorized for reimbursement does not guarantee final allowability of said expenses. Contractor agrees that the amount of any sustained audit exceptions resulting from any subsequent audit made after final payment will be refunded to the State.

All expense and accounting records related to the above referenced contract must be maintained for audit purposes for no less than three years beyond the date of final payment, unless a longer term is stated in said contract.

Recycled Product Use Certification

By signing this form, Contractor certifies under penalty of perjury that a minimum of 0% unless otherwise specified in writing of post consumer material, as defined in the Public Contract Code Section 12200, in products, materials, goods, or supplies offered or sold to the State regardless of whether it meets the requirements of Public Contract Code Section 12209. Contractor specifies that printer or duplication cartridges offered or sold to the State comply with the requirements of Section 12156(e).

Reminder to Return State Equipment/Property (If Applicable)

(Applies only if equipment was provided by CDHS or purchased with or reimbursed by contract funds)

Unless CDHS has approved the continued use and possession of State equipment (as defined in the above referenced contract) for use in connection with another CDHS agreement, Contractor agrees to promptly initiate arrangements to account for and return said equipment to CDHS, at CDHS's expense, if said equipment has not passed its useful life expectancy as defined in the above referenced contract.

Patents / Other Issues

By signing this form, Contractor further agrees, in connection with patent matters and with any claims that are not specifically released as set forth above, that it will comply with all of the provisions contained in the above referenced contract, including, but not limited to, those provisions relating to notification to the State and related to the defense or prosecution of litigation.

ONLY SIGN AND DATE THIS DOCUMENT WHEN ATTACHING TO THE FINAL INVOICE

Contractor's Legal Name (as on contract): _____

Signature of Contractor or Official Designee: _____ Date: _____

Printed Name/Title of Person Signing: _____

CDHS Distribution: Accounting (Original) Program